The Development of the Legal System in the Colony of Lagos, 1862-1905

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by

Jay Gordon

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ProQuest LLC.
789 East Eisenhower Parkway
P.O. Box 1346
Ann Arbor, MI 48106 – 1346

ABSTRACT

The development of the legal system in the Lagos colony was primarily influenced by political and economic considerations. Although English-style courts were established, their functioning was marred by an inadequate supply of legal personnel and procedures too complicated for the colony's circumstances. By the turn of the century, it was clear that radical changes had to be made in the legal system for Britain to rule effectively the areas coming under its control.

For Africans within the colony's jurisdiction, the courts remained alien institutions throughout this period. The courts were established largely for the convenience of European commercial interests, and Africans were not encouraged to make full use of them. Because of the demands of colonial rule, restrictions were placed on the employment of African lawyers and juries, and some fundamental rights were denied persons on trial.

The colonial authorities also found it inconvenient to observe the "niceties" of English law. Where larger considerations of policy were involved, especially those pertaining to slavery, debt and land, the law was flagrantly violated by officials.

This disregard for legal prescriptions was also evident in the expansion of the colony's jurisdiction to the African states on the mainland. African states were relegated to positions outside the sphere of international law in their relations with the Lagos government. By 1904, the colony's jurisdiction over non-natives was complete throughout Yorubaland, and independent African jurisdiction had been seriously curtailed.

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MAPS

ABBREVIATIONS

CO	COLONIAL OFFICE
C.P.	CONFIDENTIAL PRINT
FO	FOREIGN OFFICE
G.P.	GLOVER PAPERS
N.L.R.	NIGERIAN LAW REPORTS
P.P.	PARLIAMENTARY PAPERS

INTRODUCTION

The study of African law, like the study of African history, is largely of recent origin. Some early work on indigenous customary law dating from the turn of the century is available; and there are collections of colonial ordinances enacted in the nineteenth century with comments by contemporary legal officers.[1] The inter-war years produced anthropological studies, inspired by the theories of Malinowski, covering both East and West Africa. In particular, Rattray, Meek and Talbot dealt with the customary laws of the Ashanti and the peoples of northern and southern Nigeria, whilst Driberg, Roscoe and Lucy Mair give accounts of those of the inter-lacustrine nations.[2] Also during this period, Buell and Hailey in their mammoth surveys shed light on the laws and legal institutions of Africans under colonial rule and on colonial administrations themselves.[3]

1- See, for example, J.M. Sarbah, Fanti Customary Laws, London 1897, J.E.C. Hayford, Gold Coast Native Institutions, London 1903; A. Montagu, Ordinances of the Settlement of the Gold Coast, London 1874, G. Stallard and E.H. Richards, Laws of the Colony of Lagos, 1865-1893, London 1894, H.W.H. Redwar, Comments on Some Ordinances of the Gold Coast Colony, London 1909.

2- R.S. Ratray, Ashanti Law and Constitution, London 1929, C.K. Meek, The Northern Tribes of Nigeria, 2 vols., London 1925, P.A. Talbot, The Peoples of Southern Nigeria, 4 vols., London 1926; J.H. Driberg, The Lango, A Nilotic Tribe of Uganda, London 1923, J. Roscoe, The Banyankole, Cambridge 1923, J. Roscoe, The Bakitara or Banyoro, Cambridge 1923, J. Roscoe, The Bagesu, and other Tribes of the Uganda Protectorate, Cambridge 1924, L.P. Mair, An African People in the Twentieth Century, London 1934.

3- R.L. Buell, The Native Problem in Africa, New York 1928, Lord Hailey, An African Survey, London 1938.

Impressive as the list is, it is only since the end of the Second World War that an intensive and systematic approach to the subject has been employed, and only in the last decade that it has borne fruit. The establishment of the Journal of African Administration in 1949 provided a forum in which those interested in the legal problems confronting colonial administrations could air their views. The movement of African territories towards independence in the 1950's engendered further discussions of legal systems in journals as impressive as Juridical Review, Modern Law Review, and International and Comparative Law Quarterly. By the middle of the decade, African Law was established as a subject in its own right and attracted enough general interest to warrant the foundation of the Journal of African Law in 1957, under the editorship of A.N. Allott, now Professor of African Law at the University of London.

Since then, the field has expanded by leaps and bounds. Almost every former British colonial territory now has its own Law School and sports its own Law Journal. An American publisher, Oceana, has opened shop in Lagos and Nairobi, producing the East African Journal of Law; and publishers in this country have not been left behind. Butterworth's "African Law" series began in 1960 with Allott's Essays in African Law, and now comprises twelve volumes, including a wide range of titles covering customary and colonial law. Sweet and Maxwell's twenty-two volume "Law in Africa" series followed immediately, concentrating almost exclusively on Ghanain and Nigerian Law; and Stevens and Sons, is currently producing a series entitled, "The

British Commonwealth, the Development of Its Laws and Constitutions", with works already published on Tanganyika, Uganda and Ghana and Sierra Leone.

The result of this proliferation has been, paradoxically, a tendency towards parochialism, to the exclusion of the wider considerations of African law. This tendency is understandable and not entirely unwelcome at the present: there is a great need to establish the broad principles underlying the laws of individual African territories; further, a thorough study of African customary law is essential for the guidance of those who administer the legal systems; and, thirdly, the need for trained legal personnel in Africa makes the appearance of such series welcome at this time. But this has led to the overlooking of a subject that can loosely be termed "African Legal History". Of the authors contributing to the three series on African Law, only a handful have approached their subject historically, and none can be said to have written legal history. This of course was not their intention; they were concerned, rather, to produce legal texts for the use of aspiring lawyers. But their concern with present-day constitutions, laws and legal systems - with no more than a cursory glance backwards - has resulted in several serious shortcomings.

Because the scope of these works is restricted to present-day law and legal institutions in Africa, there has been a willing acceptance of earlier, uncritical assessments of their history. For example, the accounts of nineteenth century West African juries and lawyers contain serious misrepresentations. It is common to assume

that the jury system in West Africa proved a failure and that African lawyers were for the most part an unethical lot. But as this thesis will show, this view has no foundation and is the result of a narrow approach to historical background that too eagerly accepts the glib writings of Victorian observers and the one-sided explanations of colonial officials.[1] Similarly, this approach has produced discussions of laws being promulgated, courts established and constitutions framed with almost no reference to the social, economic and political factors that influenced these events. To be fair, the primary interest of students of African law has been the present; but in their indifference to the historical, they have left unanswered questions which historians must pose and seek answers to. Lawyers have been content to trace the development of laws and institutions and to describe the changes that have taken place. The historian, however, must start where the lawyer leaves off and search for the reasons that brought about such changes and the effects these themselves had.

There has of course been some analysis of the factors that have inspired legal and constitutional changes in Africa;[2] and the social and economic effects of the more important legal changes have been noticed by certain Africanists. C.C. Wrigley, for example, shows

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1- See below, chapter IV.

2- A recent work that affords good insight into the political motives behind legal developments in Ghana since 1951 is W.B. Harvey's Law and Social Change in Ghana, Oxford 1966.

that by altering the tenure by which land was held in Buganda, the powers of those who received mailo grants

> came to be expressed partly in terms of real property. Henceforward they were not merely office-holders but also landed proprietors. Henceforward Buganda had what it had not had before, a permanent aristocracy. 1

And R.C. Pratt issues the warning that

> any consideration of the significance of the Uganda Agreement (of 1900) which limits itself to the legal aspects is bound to be most inadequate. 2

But less revolutionary alterations in the law must also have brought about change in African societies, and it remains for the legal historian to explore such avenues.

One other factor has received only limited consideration. Practically no assessment has been made of the efficacy of laws enacted by colonial governments, and none whatever of the daily functioning of colonial courts. It has been too readily assumed that the enactment of laws and the establishment of courts in nineteenth century Africa had virtually the same effects as in England. In the nineteenth century, however, Stipendiary Magistrates and District Commissioners in Africa were seldom trained barristers or solicitors, and the law they administered resembled more closely their own concepts of equity than the common law, doctrines of equity and statutes of general application of England.[3] In addition, any assessment of the working of the

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1- L.A. Fallers (ed.), The King's Men, London 1964, 31.

2- D.A. Low and R.C. Pratt, Buganda and British Overrule, London 1960, 193.

3- The administration of the law in Lagos is discussed in chapter V.

courts should take account of the personnel of colonial judiciaries, their possession or lack of legal training, their attitudes towards Africans. As well it should endeavour to discover how important these courts were to the indigenous population, and it should not be impossible to consider how fair British justice in Africa was at this time.

It is with these questions in mind that this study has been undertaken. Although much has been written about Nigeria, and more about Lagos than any other comparable area in Africa, there has been no attempt to place the development of the colony's legal system in its historical perspective. The introduction and growth of British-type courts has been described only insofar as their constitutions were amended, and without any reference to the wider considerations that influenced these changes. The reception of English law and its application in the circumstances of nineteenth West Africa have only been discussed in the context of their relationship to present-day Nigerian law and not as the means by which British policy in Lagos was implemented. And there has been no attempt to understand how the demands of colonial rule, and not legal prescriptions alone, moulded the character of colonial legal systems.[1]

1- The standard work on Nigerian law and legal institutions is T.O. Elias' The Nigerian Legal System, London 1963. Recent additions to the growing body of works on this field are B.O. Nwabueze, The Machinery of Justice in Nigeria, London 1963, and A.E.W. Park, The Sources of Nigerian Law, London 1963. An unpublished work which discusses the development of law and institutions in nineteenth century British West Africa is W.C. Ekow-Daniels, English Law in West Africa: The Limits of its Application, London, Ph.D. 1962.

The aim of this thesis, in general, is to show that the legal system established in the colony of Lagos was chiefly influenced by the political and economic precepts of the British government. It will be argued that the system that evolved in nineteenth century Lagos was not intended to provide for the needs of the vast majority of the colony's inhabitants; that the demands of the colonial situation did not allow for English concepts of justice, resulting most notably in restrictions of trial by jury and of employment of lawyers in the courts; that the law in general, and particularly the law pertaining to slavery, debt and land, was administered in an arbitrary manner, without due regard for the legal technicalities involved, and for the benefit of commercial interests in the colony as well as in England; and, finally, that the expansion of the colony's jurisdiction to the districts, and what later became the Lagos protectorate, was equally arbitrary and at times preceded both merchants and missionaries.

It had originally been my intention to discuss as well the reverse side of the legal picture, by assessing the impact of English law and courts on the African societies that came within British Jurisdiction. Unfortunately, circumstances beyond my control have made it impossible for me to carry out research in Nigeria, and I have had to abandon this part of my thesis in all but a superficial way. Records of litigations and transcripts of court proceedings would have enabled me to weigh the effects, for example, of laws against the accusation and punishment of witchcraft. There are some instances,

cited in secondary works available in this country, of Africans being prosecuted for putting witches to death,[1] but in the absence of more detailed information, the wider picture cannot be determined. Questions, such as, did these prohibitions weaken traditional authority, or did they merely alienate Africans from British concepts of justice, must remain unanswered until further research is possible.

The legal system that developed in Lagos in the nineteenth century today forms the basis of the judicial system of Nigeria. English law is presently administered alongside customary law throughout the country and is the reciprocal law in all regions. But to appreciate fully the developments that took place in the nineteenth century, it should be remembered that the impact of English law and legal institutions on traditional concepts of justice must have been very great. A wide gulf existed between English jurisprudence and traditional Yoruba justice, and the growth of an English-type legal system had to take account of these fundamental differences.

Traditional Yoruba Society had achieved a high degree of sophistication well before Great Britain secured a toe-hold in the Bight of Benin. Unlike the numerous city-states of the Niger delta or the acephalous societies in parts of East Africa, the Yoruba had a highly centralised form of government with administrative machinery and judicial institutions. Elaborate rituals and beliefs surrounded the personage of the King who was usually reckoned to be the lineal des-

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1- See, for example, J.A. Payne's Lagos and West African Almanack and Diary for 1882, in which the author cites the case of Regina v. Satomi and ors.

cendant of Oduduwa, the mythical progenitor of the Yoruba people. As in most societies, wealth, privilege and status corresponded with the distribution of power and authority, and this acted largely as a check against the acquisition of absolute or dictatorial powers by the reigning monarch. In general, Yoruba societies had not reached the stage of development where the interests of the ruling classes inevitably conflicted with the well-being of the society as a whole; in this respect, the phrase government for the people had not yet become mere cant. But if their system of government must be categorised, oligarchy would be more appropriate than either democracy or autocracy.[1]

In traditional Yoruba societies, the King and his council constituted the highest authority in the state. There was no clear distinction between the executive, legislative or judicial branches of government: as the executive, the King and his council safeguarded the autonomy of the state and enforced its laws; as a legislative body, it made all new laws and amended or repealed old ones; and in its judicial capacity, it sat as a high court of appeal, and for cases of a more serious nature, as a court of first instance. The political structure of the state was hierarchical and based on the

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1- This paragraph and the following discussion of the Yoruba judicial system are based on the following works: A.B. Ellis, The Yoruba Speaking Peoples of the Slave Coast of West Africa, London 1894; Talbot, Peoples of Southern Nigeria; C.D. Forde, The Yoruba Speaking People of South-Western Nigeria, London 1951; A.K. Ajisafe, The Laws and Customs of the Yoruba People, London 1924; N.A. Fadipe, The Sociology of the Yoruba, London, Ph.D. thesis, 1940.

extended family unit or compound. Each compound had its chief or bale to whom all of its members were responsible. Next in line came ward chiefs who had charge of a ward or quarter comprising a number of compounds, usually identified as an extended clan. Still higher came the town chiefs, and at the apex of the pyramid stood the paramount chief, or King, and his council.

Because the Yoruba did not recognise any difference between political and judicial authority, the judicial structure of traditional societies ran parallel to its political divisions. At the lowest level was the bale's court with jurisdiction over all civil disputes that occurred within the compound. When a dispute involved members of different compounds, the respective bales sitting together could decide the case. If the bales were not on sufficiently good terms for this procedure, the case was referred to the court of the ward chief. Apart from this jurisdiction, the ward chief's court also took cognisance of all appeals from the lower courts, and disputes involving members of different wards could be settled by the ward chiefs of both parties sitting in a combined court. The highest court of the land, where there were no intermediate town chiefs, was the King's council exercising its judicial function. As such, it was the final court of appeal, and when ward chiefs were unable to constitute a court, it was competent to hear inter-ward disputes. All criminal offences, with the exception of theft, came solely within the jurisdiction of the central authorities, and these were immediately referred to the high court's attention.

Procedure in civil cases was alike in all the courts. The plaintiff stated his case first, after which the defendant gave his version. Witnesses for both sides, who were excluded from the court chamber while the principal parties testified, were then called and examined by the court. The principal parties were allowed to cross-examine each other and the witnesses, and following this, the case was summed up by the court and the decision handed down. In the high court this procedure differed inasmuch as the associate judges were asked for their opinions after the summation by the presiding judge. The decision usually reflected the majority viewpoint; unanimity was not required. In criminal cases the prosecution was handled by the judges of the court, and procedure approximated that in civil cases. Criminal procedure was inquisitorial and not accusatorial; the prosecution sought to establish the facts and the circumstances under which the crime was committed, and not simply the guilt of the accused. The decisions of the high court in both civil and criminal matters were final.

Evidence was gathered for the court by a central intelligence service which reported to the council all matters concerning the maintenance of order in the state. Information was further obtained from ward chiefs who were obliged to report daily unusual events in their precincts. Circumstantial evidence was admissable in court and was sufficient to convict. In criminal cases, great emphasis was placed on intention and motive. Thus, an accidental killing went unpunished if investigation did not establish the existence of

ill-will prior to its occurrence; however, in the course of a fight, if one combatant died, the other was usually sentenced to death. Those found guilty by the courts were penalised from small fines for minor infractions to the death penalty for crimes such as murder, incest or witchcraft. Incarceration was not often resorted to as a retributive measure, though persons awaiting execution and those who had not yet paid their fines were gaoled.[1] Suspects of serious crimes were also detained in prison until inquiries could be made and their cases brought before the court.

Judicial proceedings on the whole were highly informal. Most cases could be heard anywhere and at any time; the high court was, in fact, in perpetual session. Courts were open to all who wished to attend. Trials were generally conducted in a public area, such as the market place, or could be held in the chief's compound. Procedure during the course of a trial was equally informal. The court allowed irrelevancies, hearsay and discussion by the people witnessing the trial. Public feeling often influenced the court's judgement; indeed, the court usually canvassed the opinions of onlookers on the merits of the case and in the presence of the two contending parties. Arbitration was also an important ingredient in the overall machinery of justice. Whenever possible, third parties endeavoured to bring disputants together and to compose their differences. This was especially true when the matter involved a breach of manners. Yoruba

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1- Fadipe, Sociology of the Yoruba, 710-11. The minimising of penal sanctions in traditional society is unacceptable to many present-day Africanists.

society had well-defined social distinctions and strict social conventions, and failure to observe them was considered a serious affront. The Yoruba did not allow a breach of social etiquette or a discourtesy to fester and threaten the peace of the community, and although involving no material injury, disputes of this kind, if not settled informally, were even brought to the attention of the courts, which could then award damages to the offended party.[1]

The aims of justice in traditional Yoruba society were broadly-speaking to avoid disruption of the body politic, and to maintain the social equilibrium.[2] As such, justice was not always administered impartially to all members of the community. The authorities who administered the law were also responsible for the maintenance of order, and their primary concern was therefore with the social and political consequences of their decisions. Because of such considerations, the more powerful groups in the society often remained somewhat above the regular machinery of justice.[3] Penalties for crimes such as murder depended as much on the parties involved as on the circumstances of the act. They could be as lenient as compensation to the family of the deceased or as harsh as death for the murder of a prominent member of the community.

1- Fadipe, Sociology of the Yoruba, 704-06. Fadipe has labelled this "peace-making" justice.

2- The view that the maintenance of social equilibrium is the primary objective of African law and justice is best expressed in the works of J.H. Driberg; see, for example, At Home With the Savage, London 1932. This view, however, is not accepted by many contemporary writers.

3- Fadipe, Sociology of the Yoruba, 709-10.

In a similar way, the course of justice could be perverted by tendering bribes to the chiefs on the King's council. Bribery was not an indictable crime either for the giver or receiver; it was universally practised amongst the Yoruba, and throughout most of southern Nigeria.[1] In civil matters, bribery would not have radically altered the course of justice; cases were tried in public, and if bias was evident in the court's decision, it would not have been tolerated by most of the onlookers, who one day might have suffered in the same way. However, when a case was at all doubtful, "the party with the longest purse would usually win".[2] As regards criminal matters, bribery often had a very considerable effect. By bribing the members of the council, those accused of the more serious crimes would get off with a fine or at worst banishment, when death should have been the penalty.

This inequality before the law, through either judicial leaning or bribery, was not an abuse of the Yoruba judicial system. It was a necessary part of an administration of justice controlled by political authorities who depended on the continued allegiance and support of the more powerful elements in the society to sustain their rule. So long as the executive and judicial branches of government

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1- Ibid., 710; and Talbot, Peoples of Southern Nigeria, III, 620. But see Ajisafe, Laws and Customs of the Yoruba, 32 - "Receiving or offering bribes in order to pervert the judgement of the law is criminal. The offender is liable to a heavy fine or imprisonment or both".

2- Talbot, Peoples of Southern Nigeria, III, 620.

were combined in the King and his council, they were complimentary functions; and interference with either prerogative would ultimately undermine the practical basis of the King's authority.

Justice was administered in accordance with a body of customs and usages that had been well defined through the years and was known and accepted by the community at large. In traditional Yoruba society, new laws were seldom proclaimed, as new situations seldom arose. The law was a time-honoured body of customs handed down to the present generation by its forbears, and only ad hoc measures dealing with particular problems and remaining in force for short periods were "enacted". Sometimes, proclamations emphasised already existing sanctions: an increase in the amount of burglary in the community, for example, would bring forth a proclamation reminding the public of the punishment for this offence. But ignorance of a newly passed law was sufficient to mitigate the culpability of an offender.[1]

As its main characteristic, then, justice in traditional Yoruba society was highly informal, with all members of the community aware of the law and the procedures by which it was enforced. By way of contrast, the English legal system in the middle of the nineteenth century, was a highly technical complex of unwieldy proportions. The English judiciary itself had evolved over hundreds of years and in three distinct divisions; the courts of King's Bench, Common

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1- Ajisafe, Laws and Customs of the Yoruba, 32.

Pleas, and Chancery. Each division had its own rules and regulations as well as its own individual procedures, and their functions at times overlapped. Certain types of civil causes could be heard in the courts of only one division, whilst others could be brought before either of two. Thus, if the doctrines of equity were more favourable to a certain type of cause than the common law, the case would be brought before Chancery division courts rather than those of Common Pleas. Procedure in the courts differed for each division. Ignorance of the proper forms to be used or of the numerous sets of rules and regulations could result in a substantial injustice to the party seeking redress; and appeals could be allowed on the basis of such technical points.

The aims of English jurisprudence were to secure the rights of individuals against arbitrary acts and to serve as a means whereby legitimate grievances could be aired. It was an ideal of the system that justice was an abstract end in itself, that neither political nor social considerations influenced judicial decisions. The individual was assumed innocent until the case against him was proved beyond a reasonable doubt. The trial was conducted along accusatorial lines; the court did not have the duty to see that all pertinent facts were presented. The prosecution tried only to establish the case against the accused - it was the latter's obligation to present the facts that had bearing on his innocence. To ensure a trial free from extraneous considerations, juries of laymen were empanelled to decide the factual evidence before the court. Thus, although the prejudices

of the bench could not be completely suppressed, they became far less important, as the function of the judge was largely confined to officiating between the contending parties.

As for the law, it too had developed historically along different paths. The common law was the result of centuries of court rulings that established the principles of the law common to the entire country. Similarly, the laws of equity had slowly emerged from the rulings of Chancery courts, and where there was a conflict between the two, equity took precedence over the common law. In addition, there was the statute law, comprising the acts of Parliament, which applied in all courts and which was the supreme law of the land. The law was a highly complex and esoteric matter, the subtleties of which no layman could possibly fathom; even lawyers had difficulties understanding its nuances. The law did not remain static. There was a continual flow of Parliamentary enactments and high court rulings, which not only altered the law but changed existing general concepts as well. Although the doctrine of stare decisis[1] lent a large degree of conformity to court decisions, the law was continually being modified by such judicial rulings.

As its main characteristic then, the English legal system was of a highly technical nature which only few understood thoroughly; its laws were voluminous and its procedures obscure to the public

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1- The doctrine of stare decisis binds the high court to follow its previous judgements. It is only recently that the Privy Council has seen fit to alter this doctrine, and it may now upset a previous ruling.

at large.

The two legal systems were therefore greatly dissimilar. The administration of justice amongst the Yoruba was in general an informal process that included provision for private arbitration. The English legal system, on the other hand, was strewn with technicalities and was highly impersonal in its approach to individuals. For the Yoruba, the chief aim of justice was the maintenance of social equilibrium and the cohesiveness of the body politic; whilst justice in the English sense was more of an abstract concept that ideally did not take account of social or political consequences. The differences in the two systems of law were equally marked. In traditional Yoruba society, the law was an age-old compilation of customs which all members of the community understood; new laws were not often necessary in the circumstances of nineteenth century West Africa. In England, however, the opposite conditions obtained: new enactments continually amended old laws and concepts, and no layman was able to comprehend the scope of this vast body of legislation.

As can be seen, therefore, the mentality behind the two legal systems were basically incompatible. Although the Yoruba system of justice was relatively sophisticated, compared with other judicial systems in Africa, it had hardly assumed the same degree of development as that in England. The most fundamental difference that existed between the two was the place justice had in the governing of the respective societies. In England it acted as a safeguard against the incursions of executive authority. Amongst the Yoruba, however,

both branches of government were administered by the same authorities who regarded each as complementary functions. To the Yoruba, justice could not be divorced from the wider social and political considerations. Control over its administration was essential for the exercising of political authority in West African conditions; without it, the basis of this authority would be undermined.

CHAPTER I

British Intervention in Lagos

The island of Lagos lies off the coast of present-day southwestern Nigeria within the protecting waters of a lagoon system that extends from lake Nokue in the west to the Benin river in the east. It is accessible from the sea through a channel about half a mile wide, and despite the presence of a shifting bar, it is the finest natural harbour in that part of Africa. At an early period in its history, the island absorbed large migratory groups from Yorubaland and Benin, and over the years it evolved into a well integrated community, with traditional ties to the kingdom of Benin.[1] By the middle of the nineteenth century, however, the impact of further migrations from the interior and the introduction of non-African elements into the society were having a divisive effect. Immigrants moving south after the dissolution of the Oyo empire and the subsequent civil wars, Hausa merchants seeking greater trade opportunities on the coast, and European and Brazilian slave-traders attracted by the strategic position of the island had upset the delicate social and political balance of the kingdom, resulting in a successful coup d'etat by a claimant to the throne, Kosoko, nephew of the reigning Oba, Akitoye.

1- For the early history of Lagos see, J.B. Losi, History of Lagos, Lagos 1914, J.B. Wood, Historical Notices of Lagos, West Africa, Lagos 1933, and A. Burns, History of Nigeria, 5th edition, London 1955, 33-39.

The last vestige of traditional authority sanctioned by Benin was overthrown,[1] and the stability of the political situation that replaced it depended on the absolute control of the machinery of government by the new Oba and the favourable alignment of groups on the island. In these fluid conditions, any alteration of the internal social and political balance had to be resisted.

The demands of the internal political situation at Lagos, which called for absolute control over the island's affairs, were a direct challenge to expanding British interests along the West African coast. The emphasis of the British government's anti-slave trade policy had by the 1840's shifted from its suppression on the high seas alone to its suppression at the roots of the trade on the land as well. "Slave trade treaties" were negotiated with African chiefs along the coast, and infringements were punished by naval bombardment.[2] At the same time, proposals for ending the slave trade, by turning Africans to the development of their own resources,[3] met with official approval. Henceforth, treaties for the suppression of

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1- Kosoko overthrew Akitoye in 1845 driving out at the same time the Oba of Benin's representative, the Eletu, who had previously selected Lagos Obas. See, C.W. Newbury, The Western Slave Coast and its Rulers, Oxford 1961, 46-47, and Burns, History of Nigeria, 38.

2- As Denham's action at Gallinas in 1841 shows, naval action often preceded the signing of treaties, too. See, C. Lloyd, The Navy and the Slave Trade, The Suppression of the African Slave Trade in the Nineteenth Century, London 1949, 95-97.

3- The most influential of these was T.F. Buxton's The African Slave Trade and its Remedy, London 1840, which argued that only by substituting in its place legitimate commerce would slave trade be eradicated.

the slave trade also included provisions for grants of land for cultivation of cotton and arrangements to facilitate legitimate commerce. Henceforth, assistance to commercial enterprise in West Africa and abolition of the slave trade were complementary policies for the British government, in spite of occasional doubts that the growth of the former had necessarily to result in a decline in the latter.

As the focus of the slave trade moved eastwards to the Bights of Benin and Biafra, Britain found herself confronted by the major slave exporters in the area, most prominent being the kingdom of Dahomey. Official and unofficial missions were sent out to its King, Ghezo, in order to secure a slave trade treaty, and Ghezo encouraged the belief that he was prepared to do a deal. A treaty of friendship, reciprocity and good understanding was signed in 1846, and it included a provision for the protection of British trade.[1] It was also reported that Ghezo was prepared to agree to a slave trade treaty after arrangements had been made for the cultivation of cotton, which would take the place of the slave trade as a source of revenue.[2] In the event, the King was merely stalling for time, but in order to maintain pressure on him and to promote British commercial interests, a

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1- Sir E. Hertslet, Treaties Between Great Britain and Foreign Powers, XII, 33.

2- W.H. Scotter, International Rivalry in the Bights of Benin and Biafra, 1815-85, London, Ph. D. thesis, 1933, 68; see also S.O. Biobaku, The Egba and their Neighbours, Oxford 1957, 38.

consul, John Beecroft, was appointed for the area, the first British representative in the Bights.

While the British government was pursuing its two-fold policy, the Church Missionary Society was establishing itself on the mainland of what is now the western region of Nigeria. The failure of the Niger mission of 1841 had temporarily checked Britain's efforts along the Niger, and the initiative in the hinterland of the Bights passed to the missionaries. In 1843, a Wesleyan mission established a station at Badagry and received official protection from the then Governor of the Gold Coast, George Maclean.[1] Three years later, the Church Missionary Society was invited to establish an outpost at Abeokuta, the capital of the Egba nation. Large numbers of Egba recaptives from Sierra Leone had returned to Abeokuta in the 1840's and had influenced the Egba, who were quick to understand the value of missionary contact in defending themselves from the military incursions of Dabomey and Ibadan. The Egba were primarily interested in gaining access to the coast for purposes of trade and a steady supply of arms. They had been driven southwest during the wars following the dissolution of the Oyo empire, and they now looked to the sea for the means of survival. It was to secure this aim that the missionaries were originally invited to Abeokuta.[2]

1- J.F.A. Ajayi, Christian Missions in Nigeria, 1841-1891, London 1965, 31-35.

2- Professor Ajayi interprets the initiative as coming from the missionaries and not the Egba; see, ibid., chapter II.

In addition to government and missionary interest in the area, there was also a growing interest on the part of British merchants established elsewhere on the west coast. Merchants - particularly those at Cape Coast - held great hopes of penetrating the virgin markets of Yorubaland and extracting the palm produce that could be got in abundance there. Glowing reports of the richness of the land and the possibilities it offered legitimate commerce had wide currency, and there seemed also a good opportunity to introduce and develop a substantial cotton crop.[1] British merchants had alread followed the missionary lead to Badagry,[2] but though centrally placed on the lagoon system between Porto Novo and Lagos, Badagry was ill-suited as a port for commercial purposes. A more convenient entrepot was required before the resources of Yorubaland could be exploited.

To further their own particular interests, missionary societies and West African merchants alike looked towards the island of Lagos, which, situated at the mouth of the Ogun river, was the natural port of Yorubaland. For missionaries, the island could serve as a gateway to the hinterland and an open door through which the Egba could be supplied; for merchants, it held out prospects of a suitable base

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1- Ibid., 120-21.

2- The firms of Banner Brothers, Hutton, and Stewart & Douglas had been established at Badagry before the naval action of December 1851; see, Newbury, The Western Slave Coast, 57.

from which commercial enterprise could spread to the oil-rich mainland. The interests of both, however, were being thwarted by the policies of the reigning Oba of Lagos, Kosoko, who actively pursued the slave trade and had refused on a number of occasions to allow British subjects, or those under British protection, to establish themselves on the island.[1] The Oba was well aware of the potential influence British subjects could wield in the form of the preventive squadron, and he was unwilling to create an alternative to his authority. Thus, when a slave trade treaty was proffered by consul Beecroft in November 1851, it had to be rejected, for although the provisions abolishing slave trade in Lagos could be got around, those which provided for the admission of British merchants and missionaries would ultimately have undermined his authority.

A show of force alone could resolve the situation at Lagos. On the 25th of November, Beecroft made an abortive attempt to coerce the Oba by bringing H.M.S. Bloodhound across the bar and into the lagoon; but the ship went aground one mile from the town, and the consul was forced to retreat under heavy fire. Although Beecroft had exceeded his instructions by using force at this stage, his setback had radically altered the situation. Now there could be no re-

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1- Scotter, International Rivalry, 71; J.F.A. Ajayi, "The British Occupation of Lagos, 1851-61: a Critical Review", Nigeria Magazine, 69, August 1961, 102. A British merchant, Thomas Hutton, did on occasion go to Lagos to sell guns and powder; but no British merchants were allowed to establish factories there; see, extract of a letter from the Reverend C. Gollmer, 13 Jan.1851, in Trotter to FO, 7 Apr.1851, FO 84/860.

treat from further conflict without losing face and compromising British policy along the entire coast. Accordingly, a subsequent naval action at the end of December accomplished what the first had failed to do. Kosoko was driven from Lagos, fleeing with his followers to the town of Epe twenty-five miles to the east, and a former Oba, Akitoye, was restored to his throne after seven years in exile. On the first of the new year, a treaty was signed abolishing slave trade in Lagos and obliging the Oba to protect missionary enterprise and allow freedom of trade to all British subjects.[1] Britain had secured a toe-hold in the Bight of Benin.

The restoration of Akitoye immediately brought with it problems of authority; from the outset, his position in Lagos was weak. Treaty bound to suppress the slave trade, Akitoye was unable to gain the support of those chiefs who had formerly prospered under slave trade conditions in the late 1840's. Trade in palm-oil and -kernels entailed more arduous work with much less profit, and the chiefs grew discontented with their lot. The influx of European merchants and Sierra Leonean and Brazilian emigrants following the signing of the treaty soon alienated other sections of the indigenous population as well. African traders, without the economic advantages of the European merchants or the "smattering of European skills" possessed by the emigrants, could not compete in "the highly competitive conditions of trade at Lagos in the 1850's"; and the Idejo chiefs, "who

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1- For the naval actions of 25 November and 25 December 1851, see, Burns, History of Nigeria, 117-22. The slave trade treaty of 1 Jan. 1852 can be found in ibid., Appendix C, 302-04.

had nothing to sell but their land", soon found the ex-slaves more than their equals.[1]

Other elements of the community were also affected by the obligations of the treaty. Prohibition of human sacrifice and the protection afforded Christian missionaries[2] were resented as efforts to disparage time-honoured customs and practices; and the chiefs were indignant when the British consul intervened on behalf of two women accused of witchcraft - a matter which they considered to be within their own purview.[3] Therefore, with the exception of a hard core of followers, who had returned with him to Lagos in December 1851, Akitoye lacked the support of any important section of the African community, all of whom favoured a return to pre-treaty days.

The Oba and his supporters were not unaware of their position. British and non-native support was sufficient to remain in power, but to wield power in Lagos the approbation of the indigenous community was essential. The conditions imposed by the treaty precluded any substantial backing from this source; consequently its terms had to be circumvented. Shortly after his return, Akitoye allowed two of Kosoko's chiefs, Agineah and Pellu, to resettle in Lagos. Later the Portuguese and Brazilian slave dealers who had fled with Kosoko were readmitted. By the end of 1852, slave trade was reappearing be-

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1- Newbury, The Western Slave Coast, 56.

2- Articles VII and VIII.

3- Campbell to Clarendon, 12 Dec.1854, FO 84/950.

tween Porto Novo and Ikorodu, a large market town directly across the lagoon from Lagos. To conform outwardly to the terms of the treaty, the Oba did imprison an Austrian slave dealer, but when applied to by the then vice-consul to give up the chiefs who had sold him the slaves, he refused, contending that the dealer's accusations were unfounded.[1] Slave trading had therefore been revived, and with this additional source of income, the Lagos chiefs were somewhat placated. Akitoye's position was improving: internal support was being won over, without any loss of British assurances.

The revival of the slave trade, however, only encouraged Lagos chiefs to reconsider how profitable unrestricted slaving had been. The pre-treaty combination reappeared: the Portuguese and Brazilians consolidated the opposition in Lagos, while Agineah and Pellu, in secret alliance with Kosoko, prepared the way for his return. At first unaware of the dangers of his conciliatory measures, Akitoye refused to support the vice-consul's efforts to expel the foreign slave dealers; but after Agineah and Pellu became openly rebellious, he realised the gravity of the situation and closed the Ikorodu market to Lagos trade, thus prohibiting communication with Epe.[2] When a new consul, Benjamin Campbell, arrived at the end of July 1853, he found the island on the verge of civil war. Overreaching his authority, he prohibited any further importation of munitions from

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1- Fraser to Clarendon, 30 May 1853 and enclosures, FO 84/920.

2- Fraser to Phillips, 29 June 1853, in Fraser to Clarendon, 30 June 1853, FO 84/920.

two British vessels waiting off the bar. He rallied Akitoye's supporters and the non-native community, and with the timely arrival of H.M.S. Polyphemus and Penelope, he was able to repulse Kosoko's forces when they landed.[1] Three weeks later, Akitoye died. His endeavours to consolidate his rule had failed; only British support had kept him on his throne.

The political problems that had confronted Akitoye did not die with him. His successor, Dosunmu, was young and weak, and leadership of the indigenous community passed into the hands of the former Oba's supporters, in particular the wealthy and influential African merchant, Madam Tinubu. Antagonistic towards foreign competition, and the British in general, they were not content merely to circumvent the terms of the treaty. Abrogation of its provisions and the expulsion of British influence alone could - in their estimation - restore African paramountcy on the island. Upon the death of Akitoye, Tinubu and her husband saw to it that the traditional custom of human sacrifice was carried out. The following year, Dosunmu was compelled to readmit the Portuguese and Brazilian slave dealers whom he had expelled at consul Campbell's behest.[2] With the aid of the Portuguese and Brazilians and those chiefs who disapproved of the British presence, they plotted to assassinate the consul and purge the island of its non-native elements. Slave trade would then be

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1- Campbell to Clarendon, 30 July 1953, and enclosures, FO 84/920; Campbell to Clarendon, 3 Sept. 1853, ibid.

2- Campbell to Clarendon, 7 Oct. 1853, FO/84/920; Campbell to Clarendon, 20 Sept. 1854, FO 84/950.

revived on its former scale, and if Dosunmu proved refractory, Kosoko would be restored.

In January 1855, fighting broke out between the opposing sides, but the anticipated civil strife did not materialise. Campbell, acting with great alertness, quickly restored order, and accompanied by the Commander of H.M.S. Philomel, he proceeded to the Oba's palace and demanded the expulsion of those implicated in the uprising. Dosunmu, however, was not then willing to incur the displeasure of his own people; the Portuguese and Brazilian slave dealers were again expelled, but Tinubu and the chiefs who conspired with her were permitted to remain in Lagos.[1] The following year, with Campbell away attending to consular duties, another uprising was contemplated. Intelligence of the plot became known to the acting consul who, in conjunction with the Oba, conducted an investigation and had four known conspirators gaoled. The fortuitous arrival of three British men-of-war stifled any further threat from the insurgents.[2] Two months later Madam Tinubu and her followers were exiled from Lagos; African paramountcy was not to be re-established in Lagos for yet another hundred years.

While these unsuccessful attempts to reassert African authority were being made, the British consul was gradually extending his in-

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1- Campbell to Clarendon, 12 Feb.1855, FO 84/976; see also Campbell to Irving, 10 Jan.1855, CA2/04, in which the consul complains that Dosunmu was allowing the slave traders back to Lagos despite his protests, and that the Oba and Madam Tinubu were plotting together to rid the island of the British.

2- Campbell to Clarendon, 26 Mar.1856, and enclosures, FO 84/1002.

fluence over the affairs of the island. It had been evident from the start that Akitoye could not maintain his authority without constant British support,[1] and it was less than four months before the newly arrived European merchants and British missionaries petitioned for "a consul ... who would assist Akitoye in the government" of the island.[2] The suggestion was taken up by the Foreign Office and in September a vice-consul was appointed to reside at Lagos. The influence British interests could wield had been immediately demonstrated.

British consuls on the West African coast, however, possessed only limited authority. Consuls were instructed to protect British subjects trading or residing within their jurisdiction and to safeguard their rights against arbitrary measures. They were also granted "full power and authority by all lawful means... to examine and hear... and to compose and determine" all disputes that occurred between British subjects, or between British subjects and the subjects of any African states within their jurisdiction.[3] This meant, however, that consuls could only settle differences brought willingly before them by both parties, and their decisions in such cases could then only be enforced with the concurrence of the local authorities. In short, consuls were limited to acting in an advisory capacity and

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1- P.P. 1852, LIV (221), Papers relative to the Reduction of Lagos, Commodore Bruce to the Secretary of the Admiralty, 1 Nov.1851.

2- See, for example, Gollmer to Venn, 24 Apr.1852, CA2/M2.

3- Royal Commission of John Beecroft, 4 Sept.1848, in Stanley to Law Officers, 13 Sept.1852, FO 84/2203.

possessed no power of enforcing their will.

But the treaty signed by Akitoye did provide the legal means whereby the consul - as the representative of Great Britain - could interfere in local matters. The articles prohibiting human sacrifice and slave trade were unequivocal, and the consul could enforce compliance by threatening a visit from the preventive squadron. On one occasion, Campbell reprimanded a chief for executing two of his slaves, and learning that the children of one of them were being held by the chief, he informed the Oba who obtained their release. In a similar way, two Portuguese merchants, suspected of conducting slave trade along the lagoon between Porto Novo and Epe, were expelled from Lagos after Campbell brought their activities to the Oba's attention.[1]

The treaty also provided for freedom of trade within the dominions of the Oba and chiefs of Lagos - a provision sufficiently vague to allow the consul to remonstrate whenever the free flow of trade was threatened. The Foreign Office as well were liberal in their interpretation of this article. Akitoye was warned to keep the peace or lose British protection after his recapture of a former slave had disrupted trade across the lagoon; and by 1857 interpretation had become so free that the Foreign Office could instruct Campbell to inform Dosunmu that

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1- Campbell to Clarendon, 20 Sept. and 12 Dec. 1854, FO 84/950.

> Her Majesty's government consider that he is bound to give encouragement by every possible means to the growth and exportation of cotton. [1]

By then it was virtually impossible for the Lagos authorities to interfere with any facet of trade, or even to correct the numerous sharp practices that were current, lest their actions be regarded as treaty violations.

For the most part, the consul did not seek to extend his jurisdiction where the African authorities were able to act competently. British protection was not indiscriminately granted to Europeans; in some instances it was witheld when interference would have been readily justifiable. Nor did Campbell intercede on behalf of British merchants who had been fined, or whose palm-oil had been confiscated, by the Oba, for contravening the regulations governing trade on the island. Indeed, the consul's influence was at times used to bolster the prestige of the authorities; his "stick" was occasionally sent with messengers to the interior in order to recover domestic slaves who had escaped from the vicinity of Lagos, thereby overcoming the difficulties caused by limited African jurisdiction. The Foreign Office did not always approve such actions, and Campbell's successor was instructed to discontinue the latter practice.[2]

But the Oba and his council were unable to dominate the situation caused by new economic conditions and a division of political

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1- Campbell to Clarendon, 18 May 1853, FO 84/920; FO to Campbell, 12 Aug. 1857, FO 2/20.

2- Wodehouse to Campbell, 23 Dec. 1853, FO 2/9; Campbell to Clarendon, 7 Oct. 1853, FO 84/920; FO to Brand, 27 Dec. 1859, FO 2/28.

authority. In the years following the reduction of Lagos, large European traders like the British firms of Hutton and Banner Brothers, the Hamburg firm of O'Swald and Co. and the French house of Victor Regis established themselves along the commercial waterfront on the western portion of the island. The missionaries, too, built their stations along the waterfront and away from the congested northern end of the island where the indigenous population resided. And the newly arrived emigrant community followed their lead and erected their quarter right behind these establishments. In this area the Oba's authority was practically nugatory.

By virtue of commercial treaties with Akitoye and his successor, Dosunmu, the European merchants regulated the conditions under which trade on the island would be carried on: all Europeans were allowed to trade freely and unwarranted interference with a merchant's trade rendered the Oba liable for each day's business lost; subjects of the Oba would be prohibited from trading if their debts could not be paid, and the Oba was bound in such cases to confiscate and sell the debtor's property, the proceeds going towards repayment of the debt. Under Akitoye provisions were also made for the settlement of commercial disputes between Europeans and the Oba or his chiefs. Two disinterested parties from each side would hear the case, and if no decision was reached by them, the Oba would cast the deciding vote. If the Oba was an interested party, an outsider, chosen by the four-man tribunal, would have a casting vote.[1]

1- Sir E. Hertslet, Commercial Treaties, IX, 35.

This procedure rarely worked, and the treaty negotiated with Dosunmu in 1854 left out all provisions for deciding commercial claims. However, the increasing number of robberies along the waterfront made necessary an additional clause which bound the Oba to more vigilant efforts to prevent and punish these constant thefts. If a merchant's charge of stealing or knowingly receiving stolen property could be proved, Dosunmu undertook to fine or imprison the guilty party.[1] But no provision was made for the method of trial in such cases, and the continuing complaints of merchants that there was no effective protection for private property argues - among other things - its lax enforcement.[2]

Whereas the European merchants established virtual autonomy in their own affairs by treaty, the large Sierra Leonean and Brazilian emigrant community established theirs by remaining socially and physically aloof from the indigenous population. With some western education and skills, the emigrants set themselves up as traders and artisans, and in time "became land owners and men of substance".[3] Although not necessarily British subjects, the Sierra Leoneans

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1- Treaty of 27th Mar. 1854, in ibid., X, 14. Another trade agreement between the merchants and Dosunmu, covering approximately the same points, was signed in 1859; see, Agreement of 10 Feb. 1859, in Lodder to Malmesbury, 30 May 1859, FO 2/28. The provisions of this agreement are outlined in J.H. Kopytoff, A Preface to Modern Nigeria - The "Sierra Leonians" in Yoruba, 1830-1890, Madison and Milwaukee 1965, 107.

2- See, William McCoskry's testimony before the Parliamentary Select Committee of 1865, P.P. 1865, V (412)

3- Newbury, The Western Slave Coast, 56.

claimed the protection of the British consul; a formal agreement in 1853 gave the Brazilians a similar status - conditional to their acknowledgement of Akitoye as their ruler.[1] But in spite of this acknowledgement, which was also given by the Sierra Leoneans, the protection of the consulate lent status to the community and confirmed its separateness from the remainder of the island's inhabitants. By 1855 the Oba's authority in their affairs was practically nominal; the emigrants regulated their own relationships with each other and adjusted their own disputes, if necessary by bringing the matter before the British consul for arbitration.

In that same year, the Sierra Leoneans formed amongst themselves a court to hear and determine matters of dispute. At a meeting held in May, a committee of seventeen drew up regulations and procedures for conducting hearings and settling differences between members of their community, and the Brazilian emigrants were invited to participate. In matters of debt involving emigrants, the president, vice-president and at least three members of the committee would constitute a court and determine awards. Disputes arising from criminal behaviour could be decided by the same process, and defendants who refused to appear could be summoned and charged the costs of the case in addition to the fine imposed. If the hearing did not give satisfaction to the parties involved, an appeal could then be made

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1- Campbell to Clarendon, 25 Dec. 1853, FO 84/920.

to the British consul, his decision being final.[1]

Commercial disputes between the emigrants and African traders could be decided as well by the committee, provided the latter agreed to abide by the court's ruling. If not, the committee was to represent the emigrant's claim before the Oba and his council. In cases where the "country person" refused to act upon the committee's decision after agreeing to be bound, the Oba's intervention would be officially sought to authorise the sale of a sufficient amount of the debtor's property to discharge the claim. Emigrants were enjoined from seizing any of the indigenous population for reasons of debt, without first obtaining the Oba's sanction; however, those who had committed criminal offences might be taken prisoner and brought before the authorities to be punished.[2]

The committee did not limit itself to the judicial function alone; a night patrol was formed to police the emigrant quarter, with mandatory service for all eligible persons. At the same time, provision was made for the construction of a house of detention, and it was in use by the end of the decade.[3] Further, it was provided

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1- Campbell to Clarendon, 2 Aug. 1855, and Regulations for the Sierra Leonean tribunal enclosed, FO 84/976. See also, Kopytoff, Preface to Modern Nigeria, 100-01.

2- Regulations for the Sierra Leonean tribunal, in Campbell to Clarendon, 2 Aug. 1855, FO 84/976.

3- Ibid. The Foreign Office approved the scheme but later disallowed a section providing for deportation of emigrants to the island of Fernando Po because of its impropriety. Fernando Po was a Spanish possession. Clarendon to Campbell, 18 Oct. 1855, FO 84/976; FO to Campbell, 31 Jan. 1857, FO 84/1031; W.N.M. Geary, Nigeria Under British Rule, London, 1927, 33.

that regular meetings would be held, in which amendment of existing rules would be discussed and new ones proposed. All newcomers to the community were to be brought within four days of their arrival in Lagos to the president, who would acquaint them with the committee's regulations and functions.[1]

The division of authority in Lagos, resulting from the influx of Europeans and Sierra Leonean and Brazilian emigrants, created complex problems of jurisdiction. Merchants and their suppliers associated freely on the island, and expanding legitimate commerce led to an increasing number of disputes which involved members of different groups. No one group willingly submitted to the authority of another, and despite the existence of the Oba's court and the Sierra Leonean tribunal, claims proved difficult to settle. The disadvantages of the emigrant court for native traders bringing actions against an emigrant were obvious; and the indigenous system of justice, with its emphasis on bribery, had become unacceptable to all members of the commercial community, European and African alike. African traders lacked the economic resources to pursue with success claims against Europeans, and European merchants would barely show a profit from successful suits after the fees of the court and the bribes and gifts to the council had been paid.

In the absence of any agreeable tribunal to which disputes involving parties from different groups could be referred, the British consul came to be relied upon to provide the necessary judicial

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1- Regulations for the Sierra Leonean tribunal, in Campbell to Clarendon, 2 Aug. 1855, FO 84/976.

function. Attracted by the impartiality of consul Campbell's decisions and - more important - the absence of court fees, Europeans and Africans brought their complaints to the consulate for arbitration. In a short time, the "consul's justice" replaced the "Oba's justice" for the greater number of mixed disputes that occurred on the island.[1] The consulate, in fact, became a refuge for those who otherwise would have been victimised by the more powerful groups in the society. Lagos inhabitants found that by first bringing complaints to the consul for a hearing their case would be referred to the Oba, where it was at once listened to, and justice done to the injured party. If, however, decisions were sought without Campbell's intervention, it was often the case that the injured party never got to see the Oba, a bribe having been sent to the Oba's chamberlain "to prevent any complaint being made".[2] The "consul's justice" was so generally employed that by December 1855 Campbell could complain that his "whole time is occupied in settling and adjusting disputes" and "in obtaining justice for the weak and powerless."[3]

At the same time, the consul's jurisdiction was proving insufficient to cope with more important matters. He could intervene on behalf of British subjects whose rights had been denied by the

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1- Fees were paid in the Sierra Leonean tribunal for summonses, assessed according to the amount of the claim.
2- Campbell to Clarendon, 2 Mar. 1858, FO 84/1061.
3- Campbell to Clarendon, 7 Dec. 1855, FO 84/976.

African authorities, and a British cruiser could be summoned to his support. But unless a British subject was involved, the consul had no legal right to interfere, nor would any British Commander support his action.[1] He was legally competent to hear and decide contentious matters in general, but he had no powers to enforce his decisions; and with the impotence of the African authorities over the non-native population, the weaker elements on the island were left with no recourse to justice. The European merchants, in particular, abused their favourable position, committing acts which would not have gone unpunished had a stronger authority existed. Kroomen, employed on canoes bringing merchandise from vessels anchored in the roads, were severely mistreated and forced to work in conditions which were known to be unsafe. When they objected, they were beaten, the merchants contending that the Kroomen would be of no use unless they were flogged.[2] Campbell could only recommend they leave their employment and grant them protection against repercussions.

The Sierra Leoneans as well exploited the lack of authority in Lagos. There were complaints by the missionaries and the consul that they were purchasing slaves, ostensibly for domestic employment, and then reselling them at a profit. The consul had no legal

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1- Fraser to Malmesbury, 20 Feb. 1853, and enclosures, FO 84/920; Phillips to Fraser, 12 June 1853, in Fraser to Clarendon, 30 June 1853, ibid.

2- Campbell to Clarendon, 29 Nov. 1856, FO 84/1002.

control over this practice unless the emigrant had been born in Sierra Leone and was therefore a British subject. Although the Oba could have been "required" to expel from Lagos those who purchased slaves "for the purpose of selling them again", the charge was difficult to prove, since in the strict sense of the term, there was no such thing as free labour on the island.[1] Moreover, the Sierra Leoneans were extremely disliked by the indigenous population who were constantly being victimised by their sharp and at times unscrupulous trading practices. The young creoles, for their part, had become a source of continual violence, carrying knives with them which were used at the slightest provocation; and one Sierra Leonean, appointed by Dosunmu to supervise the widening of streets in the native quarter, was dismissed after having extorted money from its poorer residents by threatening to have their houses pulled down.[2]

Campbell was powerless to do anything but refer such incidents to the Oba's attention, and he in turn could only warn against repetition or, if thought necessary, fine the offenders. The consul's efforts to check the arbitrary behaviour of the emigrant or merchant

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1- Campbell to Clarendon, 18 Feb. 1856, FO 84/1002; FO to Campbell, 17 May 1856, ibid. This problem was solved in 1861 when the British consul required all emigrants claiming British protection to register at the consulate or forgo this protection. Those who registered had to free their slaves who were then bound apprentice for two to five years, "according to their ages". Foote to Russell, 4 Feb. 1861, FO 84/1141; Harrison to Venn, 22 May 1861, CA2/M4.

2- Campbell to Clarendon, 7 Apr. 1857, FO 84/1031; Campbell to Clarendon, 2 June 1857, FO 2/20.

communities were, of course, resented. Campbell repeatedly complained to the Foreign Office of their immunity from prosecution and that the British merchants, more than others, "consider themselves a privileged class," whose "unjust acts towards others ought not to be controlled".[1] The consul's protection of the weaker elements on the island against the injustices of the merchants and emigrants, and above all against those of his own countrymen, astonished and pleased the Africans;[2] however, the merchants and Sierra Leoneans - though equally astonished - were hardly so pleased.

In September 1856 they petitioned the Foreign Office charging that Campbell, had, among other things, converted the Oba into his puppet. Yet, they claimed, "While usurping the exercise of judicial authority, even in cases involving most intricate points of law," he refused "to take upon himself the slightest responsibility on account of his decisions," and acted arbitrarily in "this quasi-judicial function".[3] It was not difficult for Campbell to refute these charges which had been prompted by his numerous interventions in the island's affairs. A subsequent investigation completely exonerated him. The peculiar situation at Lagos, it was found, rend-

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1- Campbell to Clarendon, 25 Sept. 1856, FO 84/1002.
2- Campbell to Clarendon, 29 Nov. 1856, FO 84/1002.
3- Petition signed by 12 Sierra Leonean and European merchants, in Campbell to Clarendon, 25 Sept. 1856, FO 84/1002.

ered it "absolutely necessary" that Campbell "should take upon himself power and authority which consuls in civilised places cannot assume." In the opinion of the investigating officer, "nearly all these complaints upon investigation brought to light circumstances reflecting anything but credit upon some of the parties present and in cases where Mr. Campbell had given decisions they appeared to have been based on strict moral justice."[1]

Even the adherents of the Church Missionary Society found fault with the consul's actions. At first on good terms with Campbell after he had lent support to their claim to river frontage against rival claims by British merchants, they fell out over Campbell's removal of the head-chief of Badagry, Mewu, and his subsequent appropriation of part of their land for the erection of a new consulate. Mewu had been an ally of the Egba and therefore a friend of the missionaries, but his removal from Badagry was insisted upon by the King of Porto Novo before he would agree to re-open palm-oil trade with Lagos, and Campbell complied.[2] As for the land, a better constructed consulate was essential in the hot, humid climate of Lagos, and the Church Missionary Society's property was ideally situated on the river and in the centre of commercial activity.

1- Hope to Adams, 10 Oct. 1856, in Campbell to Clarendon, 29 Nov. 1856, FO 84/1002.

2- Newbury, The Western Slave Coast, 63. For the correspondence between the CMS and Campbell, see CA2/04, throughout. Mewu was originally a refugee from Porto Novo and an old political enemy of its king, Sodji.

The society's agents resented Campbell's intervention at Badagry as well as the loss of land, and they joined in on the attack of the consul. "His conduct at Lagos", it was charged, "has been one of the most despotic kind"; he has bullied Dosunmu who "has been made by threats ... to divest himself of almost every vestige of his authority to become a mere tool of the consul's."[1] One of the society's missionaries, the Reverend C.A. Gollmer, actually accused Campbell of having a number of innocent people imprisoned after his fears of an uprising were not borne out by subsequent events. The consul had done this - according to Gollmer - in order to give the affair "a tangible shape", and to avoid appearing foolish.[2]

At the core of much of this discontent with Campbell was the consul's ill-defined position at Lagos. Without a competent judicial authority on the island, the consul by force of circumstances could not strictly limit himself to regular consular duties, nor simply act in an advisory capacity. The only alternatives to the "consul's justice" had been no justice at all, and Campbell was forced to choose between this and exercising the judicial preroga-

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1- Irving to Venn, 1 Mar. 1855, CA/M3.

2- Gollmer to Venn, 2 Feb. 1855, ibid.

tive without the legal sanction to do so. The choice was a hazardous one. On one occasion, his intervention on behalf of a creditor with a valid claim rendered him personally liable to the debtor, while on another, his refusal to enforce payment of a disputed claim was condemned by the Foreign Office, who requested him for the future not to judge the merits of a claim but to facilitate its settlement.[1] Consular authority at Lagos was so ambiguous that it was necessary for the Law Officers of the Crown to remind the Foreign Office in December 1857 what powers he could exercise without overreaching his authority:

> In cases where one merchant makes a demand against another the consul should, as much as possible, avoid expressing his opinion to the parties on the merits of the case; he has not ... any legal power of enforcing his decision, and he should endeavour to induce both parties to submit to arbitration, and to engage to abide by the award of the arbitrator; he should then refer the case entirely to such arbitration and should (as a general rule) do what he can with proper caution to enforce the decision; as by applying to the king or taking such other reasonable measures towards securing the attainment of substantial justice as the circumstances of the case may seem to require. [2]

Earlier in that same year, the Law Officers had also ruled that the Sierra Leonean tribunal, which by then was being used by European merchants for the settlement of debt amongst themselves, was

> only empowered to decide matters of debt arising (1) between the emigrants themselves or (2) between the emigrants and country people.

The court - according to the Law Officers - had no power to exercise

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1- FO to Campbell, 9 Apr. 1857 and 18 Nov. 1857, FO 2/20.

2- Law Officers to Clarendon, 15 Dec. 1857, FO 83/2203.

any other jurisdiction.[1]

As the system of trade that prevailed at Lagos depended on credit, this ruling considerably dampened the prospects for the growth of legitimate commerce. Even before there had not been sufficient protection for the credit European factors extended to their suppliers, and when the flow of produce from the interior dropped, debt became a great problem. At such times, the consul could only suggest that merchants stop extending credit to anyone who asked for it, and that they use the facilities of the Sierra Leonean tribunal to adjust their claims.[2] But these measures were inadequate, and by 1857 it had become "next to impossible ... to enforce payment of just and undisputed debts," and the payment of any claim of magnitude could not be enforced at all.[3] Because of the difficulties of collecting debts, one British merchant decided to withdraw his activities from the island, and the firm of Foster and Smith continually complained of the lawless state of things and the lack of facilities for obtaining redress from debtors.[4] With the Law Officers' ruling on the Sierra Leonean tribunal, even this means of adjudication was now lost to the merchants.

1- Law Officers to Clarendon, 11 Aug. 1857, ibid.

2- Campbell to Clarendon, 25 Sept. 1856, and enclosures, FO 84/1002.

3- Campbell to Clarendon, 2 June 1857, FO 2/20.

4- Gregory to Clarendon, 3 Apr. 1857, FO 2/22; see, for example, Foster and Smith to Malmesbury, 14 May 1859, Foster and Smith to FO, 14 June and 3 Oct. 1859, FO 2/30.

In these circumstances, there was a very real danger that European merchants would call in foreign consular or naval support to safeguard their interests. In 1857 the minister for the Hanseatic towns in London complained to the Foreign Office of the unprotected condition of Hamburg traders in Lagos and the serious consequences to their trade from arbitrary behaviour by the African authorities. Dosunmu, it seems, had fined the agents of Messrs. O'Swald and Co., a Hamburg firm, for disregarding his ordinance prohibiting Lagos merchants from trading with Kosoko at Epe. The Foreign Office accordingly instructed Campbell to inform the Oba that in the future he would use his "good offices" on the firm's behalf, even though the consul's version of the dispute was sufficient for the Hamburg senate to caution O'Swald's representatives.[1] Two years later, after the expulsion of a French merchant, Lamaignere, the Captain of a French cruiser visited Lagos and complained of the lack of protection afforded French subjects. In passing, he mentioned the possibility of placing a French gunboat in the lagoon (a British gunboat, H.M.S. Brune, had been stationed there since 1857) to ensure that French merchants had equal protection and status with those from Great Britain.[2]

The situation as it existed in Lagos was untenable. Some form of authority had to bolster the ineffectual rule of Dosunmu and pro-

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1- Rucker to Clarendon, 11 May 1857, FO 2/22; FO to Campbell, 21 May 1857, FO 2/20; Newbury, The Western Slave Coast, 62, note 8.

2- Lodder to Russell, 3 Nov. 1859, FO 84/1088.

vide regular systems of adjudication and law enforcement. Whatever hopes the Foreign Office entertained for the development of legitimate commerce in Lagos depended on their supplying the necessary security in which it could function and grow. The African authorities had proved unable to provide these conditions, and the consul's constant interference was the subject of much criticism. Campbell himself would have been "very happy to be relieved from the necessity of exercising judicial power" which only provoked charges of "tyrannical and offensive conduct."[1] Clearly the Foreign Office had to correct the consul's feeble, irregular and irresponsible jurisdiction.

Problems of consular jurisdiction were not peculiar to the island of Lagos. In 1856 the British consul for the Bight of Biafra had become embroiled in a dispute involving the property of British subjects. The Foreign Office, which had approved similar actions in a previous case, was this time informed by the Law Officers that their consul had acted illegally on both occasions. The consul, they were reminded, had no legal right whatsoever to interfere with the conduct of British supercargos in his jurisdiction and was empowered only to make representatives to the African chiefs on the spot who might then be induced to act.[2] When applied to by the

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1- Consul's remarks, in Campbell to Clarendon, 29 Nov. 1856, FO 84/1002.

2- Law Officers to Clarendon, 27 Aug. 1856, FO 83/2357.

Foreign Office as to how this deficiency might be remedied, the Law Officers outlined two possible methods of procedure. Rules of behaviour could be drawn up by African chiefs on the consul's instigation, which would then be acceded to by the supercargos in the area. This had the dual advantage of including jurisdiction over Africans and Europeans alike, since both would be "parties or witnesses in all matters requiring regulation".[1]

The other possibility was to invest British consuls with magisterial powers. This could be done by an Order-in-Council. The Foreign Jurisdiction Act of 1843 (6 & 7 Vict. c. 94), which enabled Great Britain to exercise jurisdiction over its subjects in foreign lands, had been the legal instrument for similar Orders-in-Council for the Ottoman empire, China and Siam. And this procedure could be made to include jurisdiction over liberated Africans claiming British protection.[2]

In Lagos, the unsuccessful experience of the merchants' treaties

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1- Courts of equity were established in 1854 on the Bonny river by the supercargos and African merchants; see, Burns, History of Nigeria, 135-36, and M. Crowder, The Story of Nigeria, London 1962, 137. The procedure outlined by the Law Officers in 1856 was identical.

2- Law Officers to Clarendon, 20 Sept. 1856, FO 83/2357. Rules of behaviour were drawn up by consul Hutchinson, the supercargos and the chiefs of the Brass river; but the code, as framed, was not acceptable to the Law Officers. The Foreign Office eventually decided to include the Bight of Biafra in their planned Order-in-Council conferring magisterial powers on their consul.

of 1852 and 1854 precluded the scheme for rules of behaviour enforced by the African authorities; but the situation there was well suited for conferring magisterial powers on the consul. Accordingly, a provisional Order-in-Council was drafted in 1858.[1] By its provisions, the consul would be empowered "to make and enforce ... rules and regulations" for the observance of treaties and for the better government of British subjects within his jurisdiction. British subjects who violated the rules and regulations or who committed offences against African law could be tried by the British consul sitting alone, or in courts constituted and presided over by him. British subjects who committed crimes under common law, but not provided for within this Order-in-Council, could be held over and sent to Sierra Leone for trial by the Supreme Court there. The consul was also competent to hear and decide civil disputes between British subjects or British subjects and foreigners, provided that the latter agreed to be bound by the consul's decision. All British subjects were required to register at the consulate or forgo British protection; and an amendment, suggested by Campbell, gave the emigrant community the right to register as British subjects, and thus come within the jurisdiction of the Order-in-Council, or forfeit their privileged position and be regarded from then on as under the jurisdiction of the African authorities.[2]

1- Draft Order-in-Council, in Fitzgerald to Clarendon, 4 Sept. 1858, FO 84/1061.

2- Consul's suggestions, in Campbell to Malmesbury, 18 Oct. 1858, FO 84/1061.

The proposed Order-in-Council, then, would have enabled the British consul at Lagos to regulate the internal affairs of the island. Foreign merchants could avail themselves of the consulate's judicial competence, and the abuses previously committed with impunity would no longer go unpunished. All matters that affected commercial activity on the island would continue to be regulated through the Oba, who with British support would be able to maintain his control over the indigenous population. In the proposed Order-in-Council, the Foreign Office had gone far towards securing the conditions necessary for the growth of legitimate commerce; the problem of authority, which had confronted British consuls since 1852, could now be resolved.

The Order-in-Council, however, was not issued.[1] By 1860 this enactment, providing solely for the regulation of internal affairs, was no longer adequate. Considerations of far greater importance

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1- Consul Hutchinson secured a treaty with the chiefs of Old Calabar, and Wylde at the Foreign Office minuted that now the Order-in-Council could be issued for Lagos and Old Calabar and extended to other places as treaties were signed; minute, 16 Apr. 1860, on Hutchinson to Russell, 12 Feb. 1860, FO 84/1117. In October 1861, after the cession of Lagos, Wylde still urged that the Order-in-Council be issued for the Bight of Biafra; minute, 14 Nov. 1861, on Burton to Russell, 4 Oct. 1861, FO 84/1147. The proposal was not then implemented because, according to Wylde, Hutchinson "was not thought to be a proper person to intrust with Magisterial Powers"; minute, 14 July 1862, on Burton to Russell, 22 May 1862, FO 84/1176. An Order-in-Council in 1872 finally invested consuls in the Bight of Biafra with magisterial powers; at the same time, the Courts of Equity were legalized and regulated"; Burns, History of Nigeria, 140. The Order-in-Council of 21 Feb. 1872 can be found in ibid., Appendix E, 307-18.

resulted in a change of Foreign Office policy, and the issuance of the Order-in-Council was suspended. In February 1861, the Colonial Office was asked to take possession of Lagos. At length, the Secretary of State for Colonies agreed; and on the 6th of August 1861, "the port and Island of Lagos, with all the rights, profits, territories, and appurtenances" were ceded to the British Crown.[1]

Various explanations have been offered for the occupation of Lagos in August 1861.[2] This course of action, it has been suggested, was taken to remedy the "feeble, irregular, and irresponsible jurisdiction exercised by British consuls at Lagos.[3] It has already been shown, however, that most of the complaints emanating from merchants and officials on the island could have been met by the provisions of the proposed Order-in-Council. Consular jurisdiction would have been widely extended by this enactment, and as the Brit-

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1- Russell to Newcastle,7 Feb. 1861, FO 84/1151; Rogers to Wodehouse, 19 June 1861, FO 84/1153. The cession treaty of 6 August 1861 can be found in Burns, History of Nigeria, Appendix D, 305-06.

2- The best overall summary of the causes of the occupation of 1861 is in Scotter, International Rivalry, 87-106. Scotter, quite naturally, emphasises the Franco-British rivalry in West Africa as a contributory factor in the decision to take possession of Lagos; but to place too much importance on this factor is to anticipate events by almost a quarter of a century.

3- See, for example, Geary, Nigeria Under British Rule, 38-39, and Newbury, The Western Slave Coast, 65. The quote is from a despatch from consul Brand to Lord Russell, 9 Apr. 1860, P.P. 1862, LXI (339) Papers Relating to the Occupation of Lagos. This despatch is quoted at length in Burns, History of Nigeria, 124.

ish consul was considered by most observers the de facto ruler of Lagos, the anomalous situation of previous years would have been corrected.[1]

It has also been argued that the cession of Lagos was urged because the then Prime Minister, Lord Palmerston, "felt it necessary to increase British hold on that strategic centre at a time when he was planning a large expansion of British investment on the Niger." The overland route from Lagos to the upper Niger - it is contended - had become of great importance for this scheme because of the hostility of the peoples of the Delta to British penetration. "The decision to annex Lagos ... was, in a way, a measure of the importance attached to that route."[2] While it is doubtless true that the prospects of developing commerce on the upper Niger attracted considerable attention in Whitehall, the reason for such attention was surely the possibility of using the river itself. The successful Niger mission of 1859 had demonstrated "the practicability, at the proper season, of carrying cargo for a distance of 500 miles into the interior" in shallow-draft steamers drawing up to eight feet of water.[3]

1- See, for example, McCoskry to Russell, 7 June 1861, FO 84/1141, and minute by Wylde, 11 July 1861, on ibid.

2- Ajayi, "Occupation of Lagos", op.cit., 104, and Ajayi, Christian Missions, 168-69.

3- Report of Captain John Washington, in Admiralty to Russell, 14 Apr. 1860, FO 2/34. For Britain's activities on the Niger see C.C. Ifemesia, British Enterprise on the Niger, 1830-69, London, Ph. D. 1959. See especially chapter VIII for Dr. Baikie's activities.

By 1860, there were three trading factories functioning above the Delta, and produce coming down river from these sources had increased fivefold in only two years.[1] There was some discussion of an alternative overland route from Lagos to Rabbah, but the advantages of steaming up the Niger were, in comparison, obvious. Indeed, rather than Lagos being occupied in order to outflank the city-states of the Delta, it was thought that such a move would have a sobering effect on their hostility. In this respect, Lagos was to be a warning to those villages that had fired at British vessels ascending the river.[2]

The motives behind the occupation of Lagos were therefore neither to correct the inadequate jurisdiction of British consuls on the island, nor to secure an alternative route to the upper Niger. The reasons for the change in policy at this time lie in the general aims of Britain in West Africa and the nature of her commitment at Lagos. Towards the end of the 1850's, slave trade in the Bight of Benin was revived on a large scale. In 1857 the French government had signed a contract with the firm of Regis of Marseilles calling for recruitment of African labour to work in their West Indian colonies. As there was no free labour in Africa willing to emigrate, the contract was, in fact, a license to purchase slaves on the coast,

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1- Report of Captain John Washington, in Admiralty to Russell, 14 Apr. 1860, FO 2/34.

2- Minutes by Palmerston, 22 Apr. 1860, and Wylde, 8 Sept. 1860, on ibid.

who would be freed after several years of indentured service. News of the contract was published in Bahia, and Brazilian slave dealers in West Africa began to buy slaves in anticipation of the demand.[1] At the same time, the British Ambassador in Washington warned that

> should the Union be dissolved, which is certainly a possible contingency, the African slave-trade would unquestionably be re-established. [2]

The controversial issue of slavery in the Union had led to lax enforcement of anti-slave trade agreements on the high seas, and slavers, sailing originally from American ports, were landing their human cargos in increasing numbers in Cuba.[3]

As the demand for slaves on the coast grew, the wars in the interior that supplied them resumed. In Dahomey, trade in produce was discarded for the quicker profits of slave-raiding and to gain support for a new King, Gelele. In Yorubaland, hostilities broke out between Ibadan and Ijaye, ostensibly over the succession of the Aremo to the throne of Oyo, but more likely because of the growing tension between the two combatants, who were both vying for the dominant role in Yoruba politics. The war provoked the fear, perhaps unfounded, that in alliance with Dahomey and the Kosoko party on the coast, Ibadan would attempt to extinguish British influence

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1- Scotter, International Rivalry, 83-85.

2- Lord Napier to Clarendon, 6 Mar. 1858, FO 84/1057.

3- FO to Lyons, 10 Sept. 1860, FO 84/1110.

in the area and restore unlimited slave trade.[1]

Revival of slave trade on its former scale and the ensuing wars in the interior greatly depressed the flow of produce coming to Lagos. The economic condition of the indigenous population generally declined and, as before, their dissatisfaction was attributed to the restrictions of the treaty of 1852. In such circumstances, rumours of Kosoko's imminent return and the restoration of African paramountcy on the island were rife. Kosoko's influence in Lagos had never been effectively neutralised, and the threat he posed as a rival to the throne was as serious in 1860 as it had been seven years earlier. After two unsuccessful attempts in 1853 to dislodge him from Epe, Britain endeavoured to treat with him. Campbell presided over a palavar between the contending Obas in January 1854, and later in the year a treaty was signed. For a subsidy of 1000 dollars a year for life, Kosoko agreed to forsake slave trade, countenance legitimate commerce and make no further attempts to regain possession of Lagos.[2] Kosoko was not implicated in the 1856 uprising in Lagos; but with the decline of trade coming from the interior, he broke the terms of the treaty and revived slave trade across the lagoon. After 1859 the threat of attack from Epe remained a constant preoccupation in Lagos. Consul Brand, who succeeded Campbell in 1859, protested vigorously when informed that

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1- R.H. Stone, American Baptist missionary at Ijaye, cited in Biobaku, The Egba and their Neighbours, 65.

2- Treaty of 28 Sept. 1854, in Hertslet, Commercial Treaties, X, 18.

H.M.S. Brune was to be removed from Lagos harbour, and Dosunmu was sufficiently alarmed to request that British protection be increased. The consul realised that the situation in Lagos would never be normalised so long as hopes of Kosoko's eventual return could be entertained. He therefore advised that

> some decided and permanent measure relative to this place is all that is wanted to put an end forever to these delusive expectations. [1]

The Foreign Office could not remain indifferent to this anxious state of affairs; real or imaginary, the threat from Kosoko was a disturbing influence in Lagos. But more important, British policy in the Bight of Benin was inextricably tied to the island's fortunes. The position in 1861 was similar to that of ten years before, after consul Beecroft had failed to unseat Kosoko. British policy would have been compromised in the eyes of African rulers along the entire coast if she had allowed the defeat to go unrepaired; and it was therefore necessary to push the action home. By 1861 it was no longer possible for Britain to withdraw from Lagos without equally serious consequences: the anti-slave trade campaign and the promising beginnings of trade with the states of Yorubaland[2] would have been set-back by ten years if Lagos reverted to its former role as a slave port. Whether the policy of Great Britain in the Bight of Benin was to check the slave-raiding of Dahomey or to foster the

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1- Brand to Russell, 3 May 1860, FO 84/1115; Brand to Russell, 6 June 1860, and Dosunmu to Russell, 4 June 1860, enclosed, ibid.

2- In 1859, for example, almost 4000 tons of palm-oil, over 30,000 lbs. of ivory and almost 200,000 lbs. of cotton were exported from Lagos. See, Newbury, The Western Slave Coast, 58.

development of legitimate commerce, the island of Lagos was the key to it. As a staging post for a military expedition to Dahomey,[1] or as a convenient centre for the spread of commercial enterprise to the interior, the advantages of Lagos were self-evident. But above all, Britain was already there and could not withdraw.

The British hold on Lagos had therefore to be strengthened. The island could not adequately be defended from the sea; for nine months of the year the bar guarding the entrance to the lagoon was difficult to cross, and to depend on immediate aid from the squadron was therefore out of the question. Furthermore, the intense revival of slave trade in other parts of Africa had resulted in the number of vessels in the Bight being reduced to two. Considering the long-term possibility for its need, reinforcement of naval protection in Lagos harbour was an expense which Britain would not willingly incur; besides, the needs of the preventive squadron had made such a course of action inexpedient. Moreover, land forces were not acceptable to Dosunmu who, when requesting further British protection, would only consider

> a course similar to that adopted in stationing the 'Brune' in the lagoon. [2]

The Foreign Office was not prone to increase the number of British dependencies on the West African coast, and the Foreign Secretary,

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1- Consul Hand suggested an attack of Dahomey launched from Abeokuta, with Egba troops in support; see Hand to Russell, 3 Nov. 1860, FO 84/1115. Such an attack was not then thought practicable; but even to defend the Egba from Dahomian raids, a convenient base was needed.

2- Dosunmu to Russell, 4 June 1860, in Brand to Russell, 6 June 1860, FO 84/1115.

Lord John Russell, had long demurred on the question of taking possession of Lagos. Although consul Brand expressed fear for the safety of the island in May 1860, and the Prime Minister and the Superintendent of the Foreign Office Slave Trade Department both favoured a forward move at Lagos,[1] Russell did not then act. He waited instead for conditions on the west coast to subside. By February 1861, however, the situation was no less dangerous; if anything, it had deteriorated. The French emigration scheme had been taken up diplomatically with France, but no quick solution appeared likely.[2] In America the controversy over slavery was reaching its climax. If dissolution of the Union did occur, slave trade could be carried on with impunity by vessels hoisting the flag of the seceding states. British interests would dictate a neutralist policy and recognition of the southern states, and it was thought unlikely that an anti-slave trade treaty could be successfully negotiated with the south.[3] The war in Yorubaland had continued through the rainy season and was now being prosecuted with renewed energies under more favourable conditions. The combined result was an un-

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1- Brand to Russell, 3 May 1860, FO 84/1115; minutes by Palmerston, 22 Apr. 1860, and Wylde, 8 Sept. 1860, on Admiralty to Russell, 14 Apr. 1860, FO 2/34.

2- A convention between Britain and France was agreed to in July 1861 to take effect the following year; but "even before the Convention came into force, the Ministry of Marine was contemplating the possibility of renouncing it". See, J.D. Hargreaves, Prelude to the Partition of West Africa, London 1963, 105.

3- Lord Lyons to Russell, 18 Sept. 1860, FO 5/744. News of the secession of four southern states reached London at the end of January 1861.

certain situation around Lagos and a disturbed state within, which afforded Kosoko every opportunity - in the opinion of the Lagos consul - "to carry out his intention of attacking this place".[1]

Russell could no longer procrastinate; the logic of the situation called for action. Without British support Dosunmu's rule would end and Kosoko would be restored. The Foreign Office could not with indifference look upon the island re-falling into the hands of slave dealers. Lagos could more easily be defended under the British government. Therefore, "Lagos should be taken possession of and occupied".[2] With Russell's assurance that the War Office would provide the necessary troops to defend the island, the Colonial Office reluctantly agreed to take "temporary possession" of Lagos.[3] The instructions to effect the occupation were sent on the 22nd of June, and on August 6, 1861, Lagos was ceded to the British Crown.[4]

Although the occupation of Lagos was not a direct consequence of internal misgovernment, it did bring to an end a decade of uncertain, ineffectual rule. British influence - in the form of their merchants and missionaries - destroyed the basis of the Oba's authority by posing alternatives to his dictates. In these conditions,

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1- Hand to Russell, 10 Nov. 1860, FO 2/34.

2- FO to Newcastle, 7 Feb. 1861, FO 84/1151.

3- Rogers to Wodehouse, 19 June 1861, FO 84/1153.

4- Russell to Foote, 22 June 1861, FO 84/1141. This despatch is extensively quoted in Burns, History of Nigeria, 125.

the indigenous system of government proved wholly unable to regulate the legal procedures necessary for the maintenance and growth of legitimate commerce, and the British consul was paradoxically forced to take on those functions which his presence had been instrumental in weakening. By its intervention in the affairs of an African state in 1851, the British government had inadvertantly assumed the responsibilities of an African power in the Bight of Benin; 1861 merely recognised this role. The Foreign Office, which had avoided any decisive solution to the problems that confronted the Lagos authorities from the start, now passed on to the Colonial Office the responsibility of administering their newly acquired dependency.

CHAPTER II

The Early Court Systems, 1862-1875.

The occupation of Lagos in August 1861 came at a particularly inopportune time in the history of Britain's relations with West Africa. The humanitarian zeal of a previous generation of Victorians had been largely tempered by the 1860's, and the economic and political considerations that were to lead to the "partition" were as yet unformulated. The West African slave trade could no longer excite the same passionate opposition as formerly, and although prominent members of the government were still in favour of a forward policy in West Africa, others were having second thoughts on the wisdom of such over commitment.[1] On the whole, only limited interest could be generated by the rather unimportant details of events in British West Africa; governments took scant notice of the affairs of these territories, concerning themselves more with the larger, settled colonies in Canada, Australia and South Africa. They were not even a party issue; only a catastrophe provoked action or debate, and when the settlements were free from immediate problems - the most significant being debt - they were left alone.[2]

Indifference to matters of administration in the West African

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1- This reaction culminated in the hearings of the Parliamentary Select Committee on West Africa in 1865, the repercussions of which are summarised below.

2- C.J. Gertzel, Imperial Policy Towards the British Settlements in West Africa, 1860-75, Oxford, B. Litt., 1953, 2-4.

settlements was supplemented by the home government's preoccupation with the expenses incurred on their behalf. The economic precepts of Victorian England demanded that colonial ventures be self-supporting if nothing else; and however much commercial or humanitarian interests might be served by the added insurance of a colonial government on the spot or nearby, this cardinal principle had to be observed. It was the Gladstonian Treasury more than the Colonial Office that decided what was or was not essential for colonial rule.[1]

With its hands tied by the Treasury's parsimony, the Colonial Office was not inclined to add to its responsibilities on the west coast without reasonable assurances that such measures would not result in fiscal insolvency. In the case of Lagos, this predilection was intensified by the existence of domestic slavery amongst the island's population; while the institution could be tolerated in a protected territory - as it was on the Gold Coast - its presence at Lagos, and therefore on British soil, was viewed with great discomfort and anxiety.[2] Considered together, these negative factors were formidable, and the Colonial Secretary, the Duke of Newcastle, had twice declined to act on proposals to take possession of the island. Only the exertions of the Foreign Secretary, and most likely the intervention of the Prime Minister as well, forced him to accede to

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1- Hargreaves, Prelude to the Partition, 31-32. Even three years after the cession, plans to construct a courthouse had to be set aside as the expenditure would not be approved by the Treasury; Treasury to CO, 16 Mar. 1864, CO 147/7.

2- Memorandum by Sir George Barrow, 10 July 1862, CO 147/1. Slavery in Lagos is discussed in chapter V.

the request the third time it was tendered. Even then, the Colonial Office only agreed to take "temporary possession".[1]

Although it might have been expected that the occupation of Lagos would become more or less permanent, there was general reluctance to admit this in the early years of the settlement's history. Lagos was regarded as an unwanted and temporary appendage which had been foisted upon the already over burdened Colonial Office. With a Parliamentary grant of less than £3,000 for 1862,[2] the Colonial Office found itself administering a territory on the coast of West Africa which it regarded with disdain and which showed no outward indication of being able to pay for itself. From the start, therefore, official policy towards Lagos was conditioned by a need for thrift and a lack of sympathy for the settlement's problems. With its awareness of the expansive tendencies of colonial governments, the Colonial Office was reluctant to sanction the firm establishment of the settlement's administrative machinery; expenses were to be kept as low as practicable to meet the bare requirements of local government, and even these were not uncontested. Objections were raised, for example, when the first Governor requested the addition of a secretary to assist him, on the ground that a salary of £800 a year was sufficient to enable him to provide for one out of his own pocket. And in order to pay their man as little as possible, it

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1- FO to Newcastle, 7 Feb. 1861, 21 Mar. 1861, 10 June 1861, FO 84/1151; Rogers to Wodehouse, 19 June 1861, FO 84/1153.

2- Newbury, The Western Slave Coast, 66, note 1.

was initially suggested that the title of Lieutenant-Governor would suffice for the senior official of the settlement.[1]

But the stringency advocated by the Colonial Office was not compatible with the circumstances of the new settlement. Laws had to be made and institutions established. By Letters Patent of 13 March 1862, the territories and dominions of the Oba and chiefs of Lagos were formally created a British settlement. A Governor, Henry Stanhope Freeman, was appointed to administer the government, with power to appoint members to executive and legislative councils. The executive council was to advise the Governor on all matters of colonial business, whilst the legislative council was to make and establish all laws and institutions and constitute courts, officers and procedures for the administration of justice. All laws (ordinances) so framed had to be laid before the Crown for its "assent" or "disallowance", but they could become effective immediately in cases "in which the delay incident to a previous communication ... would be productive of serious injury or inconvenience."[2]

1- CO minute, on Freeman to Newcastle, 13 Feb. 1862, CO 147/1; Newcastle to Freeman, 16 Dec. 1861, ibid.

2- Commission of Governor Henry Stanhope Freeman, 13 Mar. 1862, CO 381/41. By 1860 there was no distinction between "colony" and "settlement". As Lagos had not been settled, the choice of the latter to describe the island appears purely arbitrary. Ordinances became effective upon their publication in Lagos - usually the day of enactment - and remained in force until a "disallowance" was received or they were repealed. Before 1868, certain categories of ordinances could only become effective after receiving the Crown's "assent".

By formal instructions, Freeman was called upon to organise the various departments of government and establish legal institutions, but at the same time he was cautioned "that it is not intended that you should at once carry into effect the several provisions contained in the Royal Instructions, but that you should take them as your guide."[1] Freeman, however, was not prepared to remain supine while his commission deteriorated. Although he had not been furnished with a legally qualified advisor, in June 1862 - almost six months after his arrival in Lagos - he convened a provisional legislative council in order to enact customs ordinances. As there was no Chief Magistrate in the settlement - without whom the council was not legally constituted - Freeman took it upon himself to appoint the persons performing the Chief Magistrate's functions to his seat. He claimed thereby to be following the spirit as well as the letter of his instructions, "inasmuch as they specify that the persons performing the functions of the officers mentioned were to be appointed." Nevertheless, in the same breath Freeman admitted that he doubted the validity of the proceedings, but he preferred to enact the laws and collect the customs rather than allow the finances of the settlement to run down.[2]

The Colonial Office was quick to condemn their Governor's measures. There had been no authorisation for original appointments

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1- CO to Freeman, 22 Mar. 1862, CO 420/2.

2- Freeman to Newcastle, 9 July 1862 and 9 Oct. 1862, CO 147/1.

to the council, and Freeman's specious argument in support of his actions was unacceptable. This being the case, legislation passed by the council was illegal, making the officers of the government who had performed their duties under the auspices of these laws liable for prosecution. The Governor was instructed to dispense with employing the council until its legality was ascertained;[1] but notice had been served by Freeman that legally or otherwise he was not prepared to stand by while the Colonial Office refused to accept its responsibilities at Lagos. Like it or not, the Colonial Office would find that at least the bare essentials of administration were to be established.

It was this type of confrontation, involving minor points of detail, that marked the development of the machinery of justice in Lagos in these early years. Some rudimentary legal proceedings, dating from the consular period, were still in operation; the consular court first used by Campbell was sitting twice a week by 1861, resolving commercial disputes of magnitude as well as "the petty disputes between the traders themselves or between the employer and the employed."[2] And immediately after the cession, the acting Governor of Lagos, the British merchant, William McCoskry, established a

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1- Minutes by Gairdner, 15 Aug. 1862, and Rogers, 16 Aug. 1862, on ibid.; Newcastle to Freeman, 1 Sept. 1862, CO 147/1. The difficulty was surmounted by Freeman appointing an acting Chief Magistrate who could then legally sit on the legislative council; Newcastle to Freeman, 22 Sept. 1862, CO 324/160.

2- Foote to Russell, 9 Feb. 1861, FO 84/1141.

temporary court for the recovery of debts.[1] For criminal matters, the acting Governor seems to have established a "magistrate" court, which sat weekly and decided minor criminal offences, and a "higher" court, which was held monthly at Government House for the trial of more serious cases. At the time, it was claimed that some cases in this court were held before juries, but it seems more likely that these trials were conducted by a number of judges rather than one.[2]

The Colonial Office had not at this time considered the problem of establishing regular legal institutions. Apart from the rather general Royal Instructions issued to their Governor, no further guidance was provided as to the judicial system the Colonial Office thought appropriate for the new settlement. Freeman, however, had ideas of his own. He realised that regular courts of law with a Chief Justice and a Queen's Advocate would entail larger expenses than the settlement could initially afford. But more important, with a population of over 30,000 Africans and a limited amount of force at his disposal, "great tact, forbearance, and conciliation" would have to be exercised by the colonial government in order to

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1- McCoskry to Russell, 5 Oct. 1861, in FO to CO, 19 Nov. 1861, CO 147/2. With the added weight of colonial authority behind the court, McCoskry claimed to have recovered more debts "than could ever have been recovered in the old mode".

2- Iwe Irohin, 25 Jan. 1862, cited in E. Thorp, Ladder of Bones, London 1956, 67-68. The higher court was at least competent to imprison offenders for 12 months; see, Extract of Criminal Records, in Carter to Knutsford, 22 Oct. 1891, CO 147/81, which reveals that a Sierra Leonean, N.T.B. Shepherd, was sentenced to 12 months hard labour for forgery in January 1862.

carry out necessary measures of improvement on the island. Until the settlement achieved a firmer basis, control of the courts - Freeman contended - should be retained by the Governor, so that he could make "such arrangements and concessions to the principles and prejudices of the Natives" as were indispensible to maintain the peaceful atmosphere that existed between them and Europeans. To Freeman's mind, "the appointment of entirely independent legal officers would be the cause of much embarrassment," as the Africans were used to an absolute and undivided authority; he had already observed

> that they will take from me the severest sentence without uttering a single word, while the courts have sometimes difficulty in making them submit to a trifling sentence. 1

Accordingly, with the help of McCoskry and another British merchant, Thomas Mayne, Freeman constituted four temporary courts: a Police Court, sitting daily for cases of petty crime and committing for trial by a higher court (the Criminal Court) "persons against whom more serious charges are brought"; a Criminal Court, judging cases referred to it by the Police Court and held on the first and third Mondays of each month; a Commercial Tribunal, convening every Friday and settling questions of debt and contract and other disputes arising from commercial transactions; and lastly, a Slave

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1- Freeman to Newcastle, 8 Mar. 1862, CO 147/1.

Court, meeting once a week to decide cases of runaway slaves and to continue the practice, begun in the consular period, of apprenticing domestic slaves of the emigrant community.[1] Thomas Mayne was appointed Stipendiary Magistrate of the Police Court, while McCoskry and Edward Le Gros - also a British merchant - became "Honorary Assessors" to the Criminal and Slave Courts. For the Commercial Tribunal, Freeman appointed three European merchants - two English and one Hamburger - and two Sierra Leoneans Honorary Assessors to sit on alternate weeks, that is,two Europeans and one Sierra Leonean constituted the court. Appeals from the decisions of all the courts would lie to the Governor in council.[2]

Freeman was not unaware of the need for some legal guidance in the courts during this transitional period. He suggested that a "Legal Assessor" be appointed by the Crown "to sit at all the Courts for the decision of all technicalities, and to prevent the other Assessors making any error in Law". In this way, he himself would gain experience in the laws and customs of the indigenous population while serving in this advisory capacity and would then be "eminently fitted for the post of Chief Justice" when more regular courts were established.

1- See above, chapter I, page 45, note 1.
2- Freeman to Newcastle, 8 Mar. 1862 and 10 June 1862, and enclosures, CO 147/1. As these courts were not established by any legal instrument, it cannot be determined beyond this cursory description what jurisdiction each court had or how decisions were reached. In this early period, assessors performed the functions of judges; after 1876 they were merely called upon to give opinions which were not binding on the court. See below, chapter III.
3- Freeman to Newcastle, 8 Mar. 1862, CO 147/1.

Freeman's proposals were closely in accord with the Colonial Office's desire to effect the most economical arrangements possible in what it still hoped was a temporary possession. But as usual, opinion in London was torn between the urge to economise and a respect for the correct forms of law. The Permanent Under-Secretary at the Colonial Office, Sir Frederick Rogers, himself a lawyer by training, was unhappy about the implication of Freeman's scheme, which he did not think the Governor fully appreciated. It raised the question of whether justice should be administered according to the notions of equity and good conscience of laymen, "subject to that sort of guidance from the judicial assessor which may be given by a clerk to a court of Magistrates;" or whether the assessor should sit with and preside over a court controlled by laymen; or whether he should hold a court wholly independent of laymen. If, it was argued, the judicial assessor was intended to rise to the office of judge, he would have to be more than a clerk of court at starting. It was therefore proposed by Rogers that he be sent out to Lagos with the understanding

> that he is to make himself generally useful to the Governor in respect to legal matters; to advise the Governor, especially in drafting ordinances; to act as a member of the legislative and executive councils; and to preside at the courts, insofar as he may be required to do so by ordinances, having a vote with the non-legal members and likewise a casting vote. [1]

1- Minute by Rogers, 21 May 1862, on ibid. For clarity, I have amended the punctuation and abbreviations in all of Rogers' minutes.

As in Freeman's original proposals, appeals from the courts would lie to the Governor in council. Rogers remained uneasy with this compromise between economy and legal propriety but acknowledged that it was "perhaps the best in a case like the present, when nothing better can be got."[1] There was no choice but to allow the temporary courts to function until a judicial officer could be sent out to Lagos.

The appointment of a London solicitor, R.W.G. Watson, to this office, with the title of Chief Magistrate, was made in November, 1862. A solicitor rather than a barrister was appointed as an economy, but for the salary of £500 offered it had not been easy even to find a suitable solicitor. The unfortunate Watson arrived in Lagos in January 1863; within a month he was dead, and Freeman was still faced with the need to constitute a regular court system, without any local legal advice or concrete proposals from the Colonial Office.

The history of the establishment of regular courts in these early years of the settlement is complicated by a number of factors. The two major courts functioning at this time - the Chief Magistrate and Petty Debt Courts - both underwent considerable alteration in the process of being established. The constitution of the Petty Debt Court, in fact, was never confirmed by the Colonial Office, and the Chief Magistrate Court only received confirmation in 1865.

1- Ibid.

Nevertheless, these courts were legally constituted as soon as local ordinances established their constitutions and until such a time as a Colonial Office "disallowance" was received or an amending ordinance enacted. Because both of these courts functioned under different constitutions for short periods of time, it is necessary to trace the changes that took place in order to determine under which constitution the courts were operating at a particular time and what considerations prompted these numerous alterations. In this way it can be shown that the eclectic development of the early court system was largely the product of the Colonial Office's overall attitude towards the firm establishment of the administrative machinery of the settlement and that the administration of justice during this period was performed in highly irregular circumstances.[1]

In April 1863, an ordinance "to provide for the better Administration of Justice" in the Lagos settlement was enacted, establishing a court of jurisdiction styled the "Supreme Court".[2] The court was a court of record presided over by the Chief Magistrate or any other person performing his functions. The court possessed the civil and criminal jurisdiction as well as the competence of the Courts of Queen's Bench, Common Pleas and Exchequer in England. It acted as a final court of appeal for all lesser courts in the settlement, but its decisions - not being cases of appeal - could be

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1- The constitutional changes of the courts in this period is also traced in Elias, The Nigerian Legal System, 39-66, and Ekow-Daniels, English Law in West Africa, chapter I.

2- Ordinance 11 of 9 Apr. 1863, CO 148/1.

appealed to the Governor in Council.

Although the Supreme Court was legally constituted upon publication of the ordinance in Lagos, and did function for almost five months, the Colonial Office did not then confirm its establishment.[1] The provision for appeals to lie to the Governor in Council in both civil and criminal cases was criticised as unnecessary, as the power of pardon, vested in the executive, was the proper remedy in criminal cases. Appeal to the Governor in Council should therefore have been limited to civil cases alone. The Colonial Office as well objected to the title of "Supreme Court", which was thought "too high sounding for the court of such an officer as can be provided for Lagos at the present salary".[2] The Lagos government was instructed to prepare another ordinance incorporating the Colonial Office's remarks.

An amended version of the April ordinance was passed in September of that year.[3] Under its new constitution, the court was styled the "Chief Magistrate Court", and two assessors would now assist the Chief Magistrate in the court's proceedings. There is no mention in the ordinance of how the court would reach its decisions, but provision was made for amending its composition; if the Chief Magistrate was an interested party to a cause, the two assessors would hear and determine the case, the senior one presiding; if

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1- CO to Glover 20 July 1863, CO 147/3.
2- Ibid.; minute by Rogers, 8 June 1863, on Freeman to Newcastle, 10 Apr. 1863, CO 147/3.
3- Ordinance 13 of 8 Sept. 1863, CO 148/1.

either assessor was an interested party, the Chief Magistrate and the other assessor would comprise the court, the Chief Magistrate presiding; if both assessors were interested parties, the Chief Magistrate would sit alone; or if all were interested, the Governor would appoint two temporary judges to sit for that specific case. The court was also granted powers of probate but was limited by this ordinance to "cognizance of all Pleas Civil" and the same jurisdiction as exercised only by the Courts of Common Pleas and Exchequer in England.

The limitation of the Chief Magistrate Court to civil causes alone, and the addition of two assessors to the court's composition were a result of the absence of a legal officer in Lagos. With Governor Freeman on leave in England, the authorities at Lagos were left on their own to tackle the complex details of framing an ordinance. Somehow, the Colonial Office's suggestion to limit the Governor's jurisdiction over appeal to civil cases was misconstrued, and the Chief Magistrate Court was unintentionally divested of its jurisdiction in criminal matters. As the merchant, William McCoskry, was appointed acting Chief Magistrate, it was also necessary to provide a procedure for amending the composition of the court should the Chief Magistrate be an interested party to any cause.[1]

Understandably, this ordinance too was not confirmed. In August the Colonial Office had appointed a new Chief Magistrate,

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1- McCoskry served as acting Chief Magistrate from 18 February to 11 September 1863. See, Blue Book for 1863, "Judicial Establishment", CO 151/2A.

Benjamin Way, and instructed him to report on the situation of judicial affairs in Lagos. Until then, however, the Chief Magistrate Court as constituted by the amending ordinance of September 1863 remained operative with its legal jurisdiction restricted to civil causes alone.[1] Way assumed his duties in October 1863, and in February of the following year the court was again re-constituted.[2] The court was now re-named "the Supreme Court", with a "Chief Justice" presiding over the court's proceedings, assisted by two assessors. The new ordinance reiterated the court's former jurisdiction in civil and criminal matters as the Courts of Queen's Bench, Common Pleas and Exchequer in England. In all cases, both civil and criminal, the Chief Justice and the two assessors would decide all questions of fact and law. Crimes and misdemeanours would henceforth be prosecuted by information in the name of Her Majesty's Advocate.[3]

The court was empowered to grant probate of wills and letters of administration of the effects of deceased persons in the settlement with like powers as those of the Court of Probate in England. For the first time, the court became a Court of Bankruptcy "with full power and authority to adjudicate all matters relative thereto".

1- CO to Glover, 19 Oct. 1863, CO 147/4

2- Ordinance 1 of 9 Feb. 1864, CO 148/1.

3- At this time, trial by information was replacing the older trial on indictment throughout the British colonies. In the United States of America, one can still see the former procedure of indictment by grand jury.

The previous provision for interested parties remained in force, but both previous ordinances relating to this court were otherwise repealed.

The Colonial Office offered constructive criticism of the ordinance. In addition to jurisdiction in probate and bankruptcy, the court should also be invested with equity jurisdiction. There were as well a number of clauses contained in the ordinance that were either vague or bad in principle which should be amended, notably the provision for deciding questions of fact and law. There was no way of determining how they were to be reached in the absence of more information, but on the assumption that a majority of the three - the Chief Justice and the two assessors - would suffice for a decision, the Colonial Office could foresee a situation arising in which the opinion of two non-professional persons (the assessors) might overrule the judgement of a lawyer (the Chief Justice) on a point of law, while the opinion of any two persons on the facts of a capital case would be sufficient to authorise the death penalty. The following changes were, therefore, urged: appeal in civil cases should lie to the Governor in Council, who in criminal cases should also have "the power of receiving alleged errors of law or of directing new trials on any grounds which could justify a new trial in England"; in capital cases, some provision for trial by jury should be prescribed, the judge determining questions of law and the jury of fact; absolute unanimity should not be required, but a capital sentence should have to be passed on the vote of more than

a bare majority; thirdly, a more explicit provision should be made for decisions in cases when only the Chief Magistrate and one assessor comprised the court and they disagreed; and lastly, prosecution by information would have to wait until a Queen's Advocate was appointed.[1]

In July 1864, a new ordinance, including the Colonial Office's suggested amendments, was enacted. By its provisions, the court was re-named the Chief Magistrate Court presided over by the settlement's Chief Magistrate. As instructed, the court became a Court of Equity with the same jurisdiction as that of the Lord High Chancellor of Great Britain within England. The reaching of decisions was more clearly defined: in all civil and criminal cases, the Chief Magistrate was the sole judge of questions of law, while in all cases except capital offences, a majority of the Chief Magistrate and the two assessors determined questions of fact. In capital cases, provision was made for trial by a jury of seven men, a majority of five being necessary to render a verdict. The Governor in Council became the Court of Appeal from decisions in civil cases, and in criminal cases, could review and determine all questions of alleged error of law, having authority to direct a new trial on sufficient grounds as would be justified in England. Although the Colonial Office warned that prosecution by information would have to wait until a Queen's Advocate was appointed, provision for this was made

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1- CO to Freeman, 28 Mar. 1864, CO 147/6.

in the new constitution, though it could not be followed in practice. Lastly, the features of the previous courts, not objected to by the Colonial Office, were retained.[1]

No immediate ruling was made on the re-drafted ordinance. The dispatch in which it was enclosed arrived in Whitehall in August 1864, but it was only in April of the following year that it came to the attention of Rogers.[2] With the exception of two rather ambiguous clauses which the Colonial Office re-wrote, and the disallowance of a provision empowering the Governor to alter the court's composition (a power that was reserved to the legislative council) the Colonial Office was satisfied that there would be no serious objections to a re-drafted ordinance.[3] Accordingly, by ordinance 5 of 1865, the Chief Magistrate Court reached its final form. Some slight modification in the composition of the court was made: capital offences would henceforth be tried by the Chief Magistrate and a jury of seven men, rather than by the Chief Magistrate assisted by assessors and a jury, as provided in the previous ordinance. With this alteration made, the Colonial Office confirmed the establishment of the court.[4]

1- Ordinance 9 of 6 July 1864, CO 148/1.

2- Rogers was away when the dispatch arrived in August 1864, and it lay misplaced and forgotten for almost eight months afterwards.

3- CO to Glover, 17 Apr. 1865, CO 147/6.

4- Ordinance 5 of 5 June 1865, CO 148/1; CO to Glover, 24 July 1865, CO 147/9.

The history of the Petty Debt Court is equally involved and as confusing. By the same ordinance that constituted the first Chief Magistrate Court (then called the Supreme Court), the court previously operating under the name of the Commercial Tribunal was "instituted the Petty Debt Court".[1] The court had jurisdiction in cases of commercial dispute where the claim did not exceed £50; and appeal from its decisions could be made to the Chief Magistrate Court. As no previous ordinance had established the Commercial Tribunal, there was no way of ascertaining the composition of the Petty Debt Court. Consequently, its constitution could not then be confirmed.[2] A supplementary ordinance, enacted in September 1863, provided this information.[3] By its provisions, six residents of the settlement, appointed by the Governor, acted as assessors in the court, any three of whom could comprise a quorum. If up to three of the assessors were interested parties to the matter before them, the cause would be heard by the remaining three, the senior assessor presiding. However, if more than three were interested parties, the cause would be heard and determined in the Chief Magistrate Court, as if it had originated there.

Again, confirmation of the court's establishment was withheld, this time pending the report of the newly appointed Chief Magistrate,

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1- Ordinance 11 of 9 Apr. 1863, Sections 5-6, CO 148/1.

2- CO to Glover, 20 July 1863, CO 147/3.

3- Ordinance 12B of 8 Sept, 1863, CO 148/1.

Benjamin Way. In his report, Way recommended that a new ordinance be enacted, "more fully defining the powers of the court and its mode of procedure formed upon the model of the County Courts in England." He was dissatisfied with the present system "of having persons totally unacquainted with law as judges." It was more to his liking to have some person, conversant with legal proceedings, act as judge.[1]

As a result, a new ordinance was framed in April 1864.[2] By its provisions, the Governor was empowered to appoint a judge who in turn, with the Governor's approval, would appoint officers of the court and regulate the conditions under which they would serve. The court had jurisdiction in commercial disputes where the claim did not exceed £20 instead of £50, and all causes would be "heard and determined in a summary way". The judge was the sole judge of all questions of law as well as fact, unless two assessors were authorised to sit with him, in which case the majority determined questions of fact. In causes involving less than £5, judgements were final and conclusive; if above £5, a new trial could be brought, and if the decision was still not satisfactory to either party, an appeal could be made to the Chief Magistrate Court, whose decision was then final. There were also minor provisions restricting the

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1- Way to Freeman, n.d., in Freeman to Newcastle, 9 Feb. 1864, CO 147/6.
2- Ordinance 6 of 6 Apr. 1864, CO 148/1.

court's jurisdiction in actions of ejectment, libel or slander and actions relating to the settlement of wills. Finally, payment of costs would be fixed by the judge.

This ordinance, however, never became effective. Unlike most enacted by the legislative council, which became effective upon publication in Lagos, this ordinance limited the date on which it would become effective to receipt of "Her Majesty's approval and confirmation".[1] And confirmation was not forthcoming. Objection was taken in London to the method of appointing assessors and regulating the conditions under which they would serve. By this ordinance, the appointment of assessors and the regulation of their conditions of service were left to the discretion of the judge with the Governor's approval. However, if public confidence in the court's decisions were to be maintained, these conditions - Rogers argued - should be prescribed by law, "not left to the varying and perhaps unrecorded will of an individual". Equally important, rules of attendance for assessors should also have been prescribed "to make it as far as may be impossible to pack the bench". Rogers further objected to a provision in the ordinance that enabled the court to issue a writ of Capias ad satisfaciendum to a person whose combined debt and costs exceeded £20. Under this provision, the court could authorise what was tantamount to the perpetual imprisonment of a debtor.[2]

1- Ibid., Section 27

2- Minute by Rogers, on Freeman to Newcastle, 8 Apr. 1864, CO 147/6; the problem of debt in Lagos is more fully discussed in Chapter V.

But there were objections to more than the provisions of the ordinance. The Colonial Office, now headed by the Right Honourable Edward Cardwell, was not satisfied that a Petty Debt Court was essential for Lagos or that the Chief Magistrate Court could not transact the business of both courts. The objection was purely on grounds of economy; for if the business of both courts could be handled without difficulty by one court, the appointment of another judicial officer could be avoided. It was therefore decided to discontinue the working of the Petty Debt Court, and this was communicated to the Lagos government.[1]

By then, however, Freeman was no longer in Lagos, and the acting Governor, John H. Glover, made out a strong case for postponing the decision to discontinue the court's functioning. Under its former constitution of September 1863, the court had consisted of four European and two Sierra Leonean assessors, three of whom sat on alternate court days. The white merchants, however, had continually absented themselves from court, and Glover - who was acting head of government at the time - appointed six new assessors, all of them coloured. In Glover's view it was because of their dislike for the new arrangement that Freeman and Way framed the court's most recent constitution, providing for the appointment of a judge. But the court had operated effectively, according to Glover; only one of its decisions had been overruled by the Chief Magistrate when

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1- CO to Freeman, 6 June 1864, CO 147/6, minute by Rogers, 28 Nov. 1864, on Freeman to Cardwell, 8 Nov. 1864, CO 147/7. CO to Glover, 5 Dec. 1864, CO 147/7.

appealed against before him. Moreover, the court had also served as a "safety valve" to the complaints of the emigrant community, who were not represented in the settlement's courts except as jurors for capital cases.[1]

With these considerations in mind, and in anticipation of the report about to be presented by Colonel Ord on the West African settlements, the Colonial Office allowed the Petty Debt Court to continue functioning under its September 1863 constitution - even though confirmation of this arrangement had not been given.[2]

In addition to the two major courts that functioned in Lagos during these early years, there were a number of minor courts operating alongside. By an Order in Council dated 21 March 1862, the Admiralty was empowered to appoint a Vice-Admiral, judge and other officers necessary to constitute a Vice-Admiralty Court in Lagos. In June, Freeman was appointed Vice-Admiral of the settlement; other appointments were deferred until qualified persons could be found in Lagos.[3] The Governor was warned at the time that "the Rules and Regulations of Vice-Admiralty Courts have not yet been extended to Lagos," and that he should only use his powers as Vice Admiral in a nominal way until such a time as they were.[4]

1- Glover to Cardwell, 1 Feb. 1865, CO 147/8; Glover had found it necessary to change the composition of the court because the European assessors seldom attended and refused to sit in the future "unless remunerated by a salary of £100 p.a. each".

2- CO to Glover, 20 Mar. 1865, CO 147/8.

3- CO to Admiralty, 23 May 1862, CO 324/158; Newcastle to Freeman, 20 June 1862, CO 420/2.

4- Minute by Halksworth, 10 Oct. 1862, on Freeman to Newcastle, 4 Aug. 1862, CO 147/1; Newcastle to Freeman, 23 Oct. 1863, ibid.

In October, however, Freeman summoned a Vice-Admiralty Court in order to condemn a slave-schooner, captured by the squadron off the coast of the Cameroons. Temporary appointments to the court were made, and the schooner was condemned to be broken up. Freeman thought his actions justified as his commission as Vice-Admiral gave him the authority to settle such a case and did not mention any limitation respecting the formation of a court. But he had clearly exceeded his powers by making temporary appointments to the court. In a rare fit of petulance Newcastle minuted:"Governor Freeman seems to think he can on all occasions make laws to suit each case."[1] The Colonial Office had little choice in the matter but to approve their Governor's actions and to commission his appointments. But they had been technically illegal, and it was necessary to have a Parliamentary Act passed granting retroactive validity to the Lagos Vice-Admiralty Court.[2]

The jurisdiction of the Lagos Vice-Admiralty Court corresponded with that of other colonial Vice-Admiralty Courts. The court had cognisance of cases involving inter alia: claims relating to seamen's wages, salvage, ownership of vessels; breaches of naval regu-

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1- Freeman to Newcastle, 8 Oct. 1862 and 6 Dec. 1862, CO 147/1; minutes by Barrow, 12 Nov. 1862, Rogers, 15 Nov. 1862, Newcastle, 17 Nov. 1862, on ibid.

2- Newcastle to Freeman, 21 Feb. 1863, CO 147/3. This was the Vice-Admiralty Court Act of 1863, which can be found in CO 854/7. In addition the Act helped facilitate future appointments to Vice-Admiralty Courts in all British possessions by creating a colony's Governor and chief legal officer ex officio members of the Court, with power to appoint the Court's Registrar and Marshal.

lations on British ships; and breaches of the various customs and trade laws relating to the abolition of the slave trade. Appeals from the court could be made to Her Majesty in Council but had to be brought within six months of the final decree or order.[1]

Two other courts functioned at this time in Lagos. The Police Court, first formed in 1862, continued to sit under its Stipendiary Magistrate, Thomas Mayne, throughout this period, though after 1863 under the name of the Police Magistrate Court.[2] The extent of this court's jurisdiction cannot be determined, as no legal instrument established it; but it can be assumed that its authority corresponded closely to that exercised by magistrate's courts in England.

As regards the final court, in 1864 an ordinance established the temporary Slave Court formed in 1862.[3] By its provisions, the court was competent in all matters pertaining to the treatment and manumission of slaves. The court was competent to fine or imprison those who committed offences against slaves, but culpability warranting a fine in excess of £10 or imprisonment for more than six months had to be brought before the Chief Magistrate Court. The

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1- Ibid.; see also, Elias, The Nigerian Legal System, 56-57.

2- Dr. Elias contends that the Police Court opened in January 1862 was "probably the original ancestor of the first Supreme Court". (p.45) It is clear, however, that this court functioned as a Police or Police Magistrate Court continuously, and that the original ancestor of the Supreme (or Chief Magistrate) Court must have been the Criminal Court established by Governor Freeman later that year.

3- Ordinance 13 of 28 Oct. 1864, CO 148/1.

Slave Court consisted of the Chief Magistrate, who was ex officio judge, and two assessors; the judge decided all questions of law, while a majority of two of the three determined questions of fact. The establishment of the Slave Court was never confirmed by the Colonial Office for reasons of policy, but Glover was allowed to continue to employ it for the time being. A decision on the court was promised following Colonel Ord's report to Parliament.[1]

The introduction of English type courts into the settlement of Lagos was, therefore, hardly systematic. For reasons of economy, together with the Colonial Office's reluctance to accept full responsibilities in Lagos, the judicial system that emerged after almost five years of British rule was barely an improvement over the temporary system that either McCoskry or Freeman had erected. The names of courts changed almost as frequently as their constitutions; and by the end of 1865, only two of the five courts functioning on the island had been regularly established by ordinance. Nevertheless, the courts did function. Ordinances became effective upon publication in Lagos (usually the day they were passed by the legislative council), and only a Colonial Office "disallowance", or a subsequent amending ordinance, could invalidate them.[2] Technically, the courts were acting illegally as soon as such a "disallowance"

1- Minute by Cardwell, 18 Feb. 1865, on Glover to Cardwell, 27 Dec. 1864, CO 147/6.

2- This is not entirely true, as colonial legislation, repugnant to the laws of England in force in a colony, was ipso facto null and void. This is discussed more fully in Chapter V.

was received, but in practice, publication of the Colonial Office's decision was often withheld until a new ordinance could be drafted.

The results in practical terms were often ludicrous. For five months from September 1863 to February 1864, the Chief Magistrate Court functioned without any jurisdiction in criminal matters; yet criminal cases continued to be brought before the court during this period, and no later ordinance legalised these extraordinary proceedings.[1] As for the Petty Debt Court, it seems that after April 1864 it functioned under provisions of a constitution that at no time became effective. Until 1864, the court was competent to deal with matters in which the claim did not exceed £50. In April of that year, provision was made to limit the court's jurisdiction to causes involving £20 or less; but as has already been shown this ordinance was only to become effective upon confirmation, and this was withheld. Accordingly, the court's jurisdiction should have remained unchanged and included causes involving sums up to £50. Nevertheless, this does not seem to have been the case; for an analysis of the fees taken by the Chief Magistrate and Petty Debt Courts both before and after 1864 indicates that the latter func-

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1- The trial for theft of a Sierra Leonean in October 1863 is mentioned in Colonel Ord's Report, op. cit., 47-48; but neither Ord nor the Lagos authorities realised the court had acted without the jurisdiction to do so.

tioned under the provisions of the April 1864 ordinance.[1]

The courts established under Governor Freeman and acting Governor Glover did not survive the middle of the decade. General criticism of British policy in West Africa had led to the formation of a Parliamentary Select Committee, which conducted its hearings in 1865. The committee found that the West African settlements were expensive to maintain and of little commercial value in comparison with the informal mercantile arrangements in other parts of the coast. Retrenchment and reform was, therefore, its verdict.[2] The committee's recommendations were not wholly unwarranted: prevailing economic thought dictated that only those colonies that were self-supporting were of value to the mother country, and none of the four West African Settlements was able to pay for itself.

1- Fees taken by the Petty Debt Court and by the Chief Magistrate Court in 1863 totalled over £200 and £56 respectively. Two years later, fees in the Petty Debt Court dropped to less than £150, while in the Chief Magistrate Court they rose to over £120. And in 1866, the figures for fees were £181.1s.0d. and £148.16s.2d. respectively. Figures from Blue Books for 1863, 1865 and 1866, "Fines, Fees and Forfeitures of Courts", CO 151/2-4. It is improbable that the decline in business in the Petty Debt Court accompanied by a rise in the Chief Magistrate Court's was the result of an increase in the amount of litigation in claims above £50 in value. Similarly, it is doubtful that the number of suits involving claims of up to £50 would have declined between 1863 and 1865 without an equivalent decline in the higher court's business. For with a growing awareness of English-type courts, the small African trader would have been more than ever inclined to bring his complaints before the settlement's courts, while those whose actions involved larger sums would have been doing so for some time.

2- P.P., 1865, v (1), Report of the Parliamentary Select Committee of 1865 on the British West African Settlements.

This, of course, did not take into account the various benefits that British commerce derived from the presence of British rule along the coast, nor was it fair to compare the immediate commercial value of these settlements with palm-rich areas like the Oil Rivers. Because of these mitigating circumstances, the committee's recommendations were, in fact, a compromise. Withdrawal from West African commitments, although envisaged for the relatively near future, had been opposed by humanitarian and commercial interests, and was never carried out; and although the policy as laid down by the committee would allow for no further assumptions of territory in West Africa, this did not prohibit extensions of existing settlements, if it resulted in more efficient and economical administration of a settlement.[1]

The emphasis of the committee's findings, however, were unequivocal, and reinforced the prevailing attitudes of the Colonial Office and the Treasury. Whereas formerly improvements in the local administration of the settlements had been judged on their merits, no such dialogue could now be held. Even more than before, additional expenses were frowned upon. For Lagos, there were predictable consequences. Internal improvements and enlargement of the skeleton complement that administered the settlement were temporarily set aside and even forgotten. Public buildings decayed from neglect: the courthouse, located at Tinubu Square in the centre of the island,

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1- Ibid. A good short analysis of the Select Committee and its recommendations can be found in Hargreaves, Prelude to the Partition, 64-90.

went unrepaired, with "a large rent in one of the walls extending from the roof to the foundation", until 1873 when a portion of the building was adjudged unsafe by the Colonial Engineer.[1] The appointment of a Queen's Advocate, without whom trials on information could not commence, was left in abeyance, continuing the situation of having only one trained legal officer for the judicial needs of the settlement.[2] In general, it can be said that little or no improvement was made in the administration of Lagos in the decade after 1865, and this was to a large degree attributable to the recommendations of the Parliamentary Select Committee. Efficiency and economy were not compatible goals on the coast of West Africa, and in the resulting conflict, the former was always sacrificed to the latter.

As a result of the Select Committee's recommendations, Britain's four West African settlements were unified and placed under a Governor-in-Chief, residing at Sierra Leone. Each settlement retained its head of government, now called an Administrator, as well as independent executive and legislative councils. Some change was made in the legislative process. All ordinances had still to be submitted for confirmation to the Colonial Office, but the lines of communication between individual settlements and London were no longer

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1- Strahan to Berkeley, 13 Nov. 1873, in Berkeley to Kimberley, 4 Dec. 1873, CO 147/28.

2- Of the five magistrates conducting courts in the settlement in 1870, only Chief Magistrate Way had a legal background. He was a solicitor; the four others were either merchants or military personnel.

direct. Now, in 1866, an ordinance had first to be transmitted to the Governor-in-chief at Sierra Leone for his consideration. It was then returned to the settlement for the Administrator's assent, whereupon it became effective until "Her Majesty's Pleasure" was known. At first, certain classes of ordinances were prohibited from taking effect until the Crown's confirmation was received, but the delay involved in this was often inimical to the interests of the settlement, and the prohibition was relaxed in 1868.[1]

Essentially, the interposition of Sierra Leone between settlements and the Colonial Office merely shifted the burden of revising poorly phrased, and at times illegal, ordinances from London to Freetown. Sir Arthur Kennedy complained of this soon after he became Governor-in-chief in 1868. The current procedure, he thought, of enacting legislation and then transmitting it back and forth between Sierra Leone and the other settlements was time consuming and to no advantage. So long as ordinances had to be referred to Freetown, he continued, some uniformity in the legislation of the different settlements might as well be achieved. Accordingly, he suggested that for the future ordinances should be submitted to Sierra Leone "after the first reading, to be revised, approved of, and returned for final enactment". This modification was approved by the

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1- Blackall's Instructions, 20 Feb. 1866 and Kennedy's Instructions, 13 Jan. 1868, CO 381/80. The journey by steamer from Lagos to London usually took just over five weeks. With delays, and the time needed in London to consider proposals, this meant almost three months would pass from the time an ordinance was enacted until a Colonial Office decision reached Lagos.

Colonial Office, and after 1868 colonial legislation in West Africa bore the mark of the various Queen's Advocates at Sierra Leone.[1] In spite of these added checks, legislation emanating from Lagos did not remain free from irregularity.[2] But for the most part, the intermediary position of Sierra Leone obviated most of the objections that ordinances from Lagos had previously met with. The Governors-in-chief and Queen's Advocates at Freetown could more fully appreciate the difficulties faced by the Lagos authorities than the Law Officers in London, and their favourable opinions regarding specific legislation were not often disregarded.

The unification of the West African settlements presented a unique opportunity for reforming the various judicial systems on the coast and integrating them within the framework of a common judiciary. The opportunity was not unnoticed. In 1866 the Assistant Permanent Under-Secretary of State for the Colonies, T.F. Elliot, and the designated Governor-in-chief of the West African Settlements, Major S.W. Blackall, outlined a plan for consolidating the four judicial systems and placing them under the auspices of the Supreme Court of Sierra Leone. Whereas the Gambia and the Gold Coast in addition to Sierra Leone had its own Supreme Court, under the new scheme of things only the latter would retain its superior court of

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1- Kennedy to Buckingham and Chandos, 11 Aug. 1868, CO 267/294; CO to Kennedy, 10 Sept. 1868, Ibid.

2- A validating ordinance had to be passed in 1867 to protect government officers who had acted under the provisions of three illegally enacted ordinances. Ordinance 2 of 13 Apr. 1867, CO 148/1.

jurisdiction presided over by a Chief Justice. Both the Gambia and the Gold Coast would be provided with a "Resident Magistrate" who would be competent to hear most civil and criminal causes. The judicial establishment at Lagos would also be reduced to a Resident Magistrate, but, in addition to him, a judge of the Sierra Leone Supreme Court would reside there, adjudicating "more serious cases" both at Lagos and the Gold Coast. At Sierra Leone and the Gambia, this would be performed by the Chief Justice.[1]

The proposals outlined by Elliot and Blackall had the virtue of economy: the judicial establishments at the Gambia and the Gold Coast would be reduced from three - a Chief Justice, a Magistrate and a Queen's Advocate - to the one Resident Magistrate, while at Lagos it would remain the same - a judge of the Supreme Court would be added, but the Resident Magistrate would replace the Chief Magistrate and the Stipendiary Magistrate. Both Elliot and Blackall thought that a superior judge would be necessary for Lagos if the island were to become a great commercial centre, but they confessed that a lack of experience did not enable them to judge accurately that place's needs.[2] For his part, the Secretary of State, Edward Cardwell, who had been a member of the Parliamentary Select Committee of 1865, looked with favour on any scheme that reduced expenditure in West Africa. He, therefore, approved the essential characteristics of the plan, including the proposed circuit system of judges

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1- C.P. Number 6 of 1866, Memorandum by T.F. Elliot and Major S.W. Blackall, CO 879/2.

2- Ibid.

periodically visiting the Gold Coast and the Gambia; but it was left to Blackall, who had returned to Sierra Leone, to submit for Colonial Office approval the details of the scheme and the measures needed to implement it.[1]

On arrival in Freetown, and eager to please in his new capacity, Blackall hastily framed a more concrete outline for the integration of the four West African judiciaries. Only a slight alteration was made to the earlier joint proposal. The four judicial systems would still come within the structure of one Supreme Court, but the court would now consist of three judges, a Chief Justice and two Puisne Judges, one of the latter residing at Lagos. Each of the three "dependencies" would have a Resident Magistrate, who would be allowed to define the limits of his own jurisdiction in accordance with the individual situation. Regular circuits would be established, presided over by a judge of the Supreme Court, who would have jurisdiction in all causes not triable by Resident Magistrates. Circuit judges would also act as a Court of Appeal from the decisions of magistrates, and the "Full Court" of three superior judges would constitute an appeals court from the decisions of any one judge. Lastly, appeals from the Full Court would lie to the Privy Council in England.[2]

Blackall's hastily penned scheme failed to take account of the con-

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1- Cardwell to Blackall, 23 Feb. 1866, CO 268/50.

2- Blackall to Cardwell, 20 Apr. 1866, CO 167/287.

ditions in which it would have to operate. The great distances that separated the individual settlements from each other, as well as from Sierra Leone, rendered impracticable a plan which on paper had the virtues of economy and efficiency. Judges moving back and forth along the coast, and dependent on an irregular mail-steamer service, would have spent almost as much time travelling as in the performance of their judicial duties. Similarly, the uncertainty of life in West Africa and the difficulty of keeping witnesses together for any length of time would have precluded any circuit system on even a semi-annual basis. And thirdly, there would have been a growing resentment on the part of the inhabitants of the three dependencies if their interests and the settlement's were to suffer while awaiting the arrival of a judge from Sierra Leone.

Most of these objections were brought to Blackall's attention by his Chief Justice, John Carr, who was alive to the difficulties of such a plan which it would have fallen to him to implement.[1] It did not take very long for Carr to convince Blackall, who would ultimately be responsible, that these objections were formidable. Within a month of his arrival in Sierra Leone, Blackall retracted his original proposals in favour of a less radical scheme, conceived by Carr, which was a complete volte face from the idea of judicial integration. In effect, Carr's scheme would allow each settlement

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1- Carr to Blackall, 16 Apr. 1866, in Blackall to Cardwell, 19 May 1866, CO 267/287.

to retain its original jurisdiction in all civil and criminal matters. Some check on the power of local magistrates would be provided: evidence in their courts would be taken down in writing, and appeal would be allowed in all cases to a judge of the Sierra Leone Supreme Court, who would visit each settlement twice a year.[1]

Some feature of the idea for a common West African judiciary would have been retained by the provision for circuit appeals; but even this was not implemented. As was its wont, the Colonial Office agreed to those proposals that decreased colonial expenditure and opposed those which added to it, even though the increased expense was necessary to effect any meaningful improvement. In this instance, Carr's suggestions to limit the Sierra Leone Supreme Court to a Chief Justice and an Assistant Judge, and to maintain the jurisdiction of Resident Magistrates in all causes, were approved. Salaries for professional men ran high, and the expense of a circuit court system would have been considerable. Still if some improvement were to be made in the judicial systems of West Africa, some form of central control was needed. Nevertheless, this was not provided, nor in fact were circuit appeals, which even Carr had thought essential if local magistrates maintained their competence in all civil and criminal causes.[2] As a result, the attempt to integrate the judicial

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1- Ibid.

2- The following legal instruments established the judicial systems of the West African settlements: ordinance 4 of 16 Nov.1866, CO 269/2, which amended the constitution of the Supreme Court of Sierra Leone; ordinance 7 of 1 Dec. 1866, CO 148/1, which established the Court of Civil and Criminal Justice in Lagos - a duplicate ordinance to those that established similar courts in the Gambia and the Gold Coast; Order in Council of 26 Feb. 1867, PC 2/265, 343-47, which established the West African Court of Appeal.

systems of the West African settlements failed. Each settlement retained original jurisdiction over all causes. Only Sierra Leone retained a "Supreme Court", the "high courts" of the three dependencies now being styled Courts of Civil and Criminal Justice. But for all intents and purposes, the distinction between the two was purely nominal.

The controversy over judicial integration did produce one innovation. In 1867 a West African Court of Appeal was established to hear appeals from the Courts of Civil and Criminal Justice in civil causes where the value of the claim exceeded £50. The court, consisting of the two judges of the Sierra Leone Supreme Court, sat at Freetown. Its decisions had to be unanimous; in case of a division of opinion, the appealed decision was confirmed. Further appeal could be made from this court to the Privy Council in England. But even this measure brought no immediate results. It was not until June 1869 - over two years later - that rules for appeal to the court were framed and a schedule of fees to be paid drawn up. Even then the difficulties and expense that appeal to Sierra Leone entailed mitigated the court's usefulness; indeed, by 1871 only one appeal had been brought before the court.[1]

The court continued to exist - though rarely used - until 1877. Occasionally, suggestions to amend this unsatisfactory method of appeal were made. On one occasion Kennedy attempted to revive the

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1- Rules for Appeal and Schedule of Fees, in Kennedy to Granville, 1 June 1869, CO 267/301; Kennedy to Kimberley, 19 Oct. 1871, CO 267/312.

idea of circuit appeals; and in 1873, Lagos merchants urged that appeals should bypass the court at Freetown and lie direct to the Privy Council. The latter was countenanced by the Colonial Office but was unacceptable to the Privy Council, who could find no precedent for such a procedure.[1] The West African Court of Appeal was resurrected in 1928; by then, however, conditions were no longer opportune, and the court could not survive the era of independence some thirty years later.

The opportunity to integrate the judicial systems of West Africa was allowed to slip by, and the possibilities that a common legal system held for the future development of the four West African settlements were, therefore, never realised. Bound by the dictates of the Parliamentary Select Committee of 1865, the Colonial Office would not incur the additional expenses that such a measure would give rise to, and the authorities at Sierra Leone, in particular Blackall and Carr, were equally unwilling to accept responsibilities without ample assurance that they were manageable and would be successful. The result was a great deal of correspondence between England and West Africa with only a slight alteration in the existing systems. No change had any lasting effect, and individual colonial governments continued their different approaches to the administration of justice in the light of local and immediate needs.

As a consequence of the attempt to combine the four West African

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1- Kennedy to Granville, 30 Apr. 1869, and enclosures, CO 267/300; Berkeley to Kimberley, 31 Dec. 1873, and enclosures, CO 267/322; minute by Holland, 21 Jan. 1874, on Ibid.; Reeve to Holland, 6 Feb. 1874, CO 267/327.

judicial systems, the high court of Lagos was styled the Court of Civil and Criminal Justice. The court had jurisdiction in all civil and criminal matters arising in the settlement, with a Chief Magistrate as its President. The court retained its jurisdiction in matters of probate, and although no provision was made for the court's jurisdiction in bankruptcy or equity, nor was there any reference to the high courts of England, this jurisdiction and competence had been a feature of former court constitutions, and remained effective.[1] The employment of assessors was discontinued. In civil causes now, the Chief Magistrate sat alone, determining questions of both law and fact. In actions involving more than £50, the evidence had to be taken down in writing by the clerk of court, and in suits involving lesser amounts, the court could permit this procedure upon application by either party. In criminal cases questions of fact were now decided by a jury of from six to twelve men. No provision for how the jury would reach a decision is contained in the ordinance, but it seems unlikely that unanimity was required in any but capital cases. There was no appeal from the court's decisions in criminal cases, but sentences of death, transportation, banishment and penal servitude for more than twelve months had first to be reviewed by the Administrator before the sentence could be carried out.

1- Ordinance 7 of 1 Dec. 1866, CO 148/1; Section 12 of Ibid.

The establishment of the Court of Civil and Criminal Justice was supposed to have ended the division of civil jurisdiction in Lagos. The Petty Debt Court, whose establishment the Colonial Office had never confirmed, accordingly ceased to function after 1866; but in its place evolved a quasi-legal method of settling the numerous minor civil disputes that otherwise would have inundated the high court. From 1867, the Lagos Police Magistrate Court, in addition to its normal role as a court of summary justice, appears to have functioned as a petty debt court. There is no legal instrument establishing this procedure, and it is doubtful that the Colonial Office knew of it at the time; but from the evidence of fees collected by the Police Magistrate Court, there seems little doubt but that the court functioned in this civil capacity.[1]

That the Police Magistrate Court did function in civil matters is borne out still further by the provisions of the ordinance estab-

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1- After 1867, there is a sharp increase in the amount of fees paid to the court from just over £100 in that year to well over £300 in 1869 and 1870. But though this corresponds roughly to the rise in the number of petty crimes and the amount of fines inflicted by the court, in 1871 fees in the Police Magistrate Court decreased to under £100, despite a continued rise in both crime and court revenue from fines. The fact that this decrease in court revenue in 1871 coincides with the establishment in August 1870 of a Court of Requests, which had jurisdiction in civil matters up to the value of £50, indicates the extra-legal functions of the Police Magistrate Court after 1867. Figures from Blue Books for 1867-71, "Fines, Fees and Forfeitures of Courts", CO 151/5-9.

lishing the Court of Requests in 1870. Unlike the former Petty Debt Court, the Court of Requests was presided over by the Police Magistrate of Lagos and was a court of summary jurisdiction. What seems to have been done, therefore, was to formalise an existing, though illegal, procedure, one that could be appreciated for its economy by the Colonial Office. Other features of the court also emphasised its reasonableness. In causes exceeding £5, the Police Magistrate would sit with at least one (unpaid) Commissioner, appointed to the court for a term of one year, but serving at the Administrator's pleasure. Decisions were reached by a majority vote. In cases when the court's opinion was equally divided, the Police Magistrate had a casting vote.[1]

In addition, the court was competent to determine claims of up to £50. It had no jurisdiction in matters relating to land or in suits for assault and battery, libel, slander or trespass. In order to facilitate business in the court, evidence of a lesser kind could be admitted than could be in the Court of Civil and Criminal Justice; notably, magistrates could examine either party to a suit or witnesses who were about to leave the settlement at a time prior to the hearing, and this evidence held good in court. The court was empowered to execute its judgements and could order up to twelve months imprisonment for non-compliance with its decisions.

1- Ordinance 7 of 17 Aug. 1870, CO 148/1. Commissioners in the Court of Requests performed the same function as assessors had in the earlier courts. Originally, the list from which commissioners were drawn was restricted to Africans - Sierra Leoneans for the most part. Glover deleted this restriction in 1871. See, Kopytoff, A Preface to Modern Nigeria, 211.

Appeal could be made in cases involving £5 or more to the Court of Civil and Criminal Justice, whose decisions were then final. Only one other provision need be mentioned. This limited the employment of counsels or attorneys in the court to cases in which both parties consented to their appearance. Even then counsel could only act without fee or reward for his services, and although he could examine witnesses, he was not allowed to address the court directly.[1]

In criminal matters, the division of jurisdiction between the high court and the Police Magistrate Court continued. From the available evidence, it seems likely that until 1873 the Police Magistrate Court was competent to imprison offenders for at least six months and perhaps as much as one year. After 1873, however, the maximum term of imrpisonment was limited to six months.[2] The court's jurisdiction to fine offenders cannot be determined from the available evidence, but it does not appear likely to have exceeded the sum of £25. In fact, in most cases fines could not have been more than nominal.[3] Throughout this period, the Police Magistrate Court functioned without a legal constitution to guide it, and it appears that its jurisdiction was the result of usage as dictated by the

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1- The restriction of lawyers in the courts is dealt with more fully below, Chapter IV.

2- Blue Books for 1872/76, "Gaol Statistics", CO 151/10-14; R.D. Mayne to the Assistant Secretary of State, 20 July 1874, CO 147/30.

3- Comparing the number of persons fined from 1872 through 1876 with the total amount of fines collected by the court in these years, the average fine was just over 14s. Blue Books for 1872/76, "Criminal Statistics", and "Fines, Fees and Forfeitures of Courts", CO 151/10-14.

settlement's needs.[1]

Only one further court was established in Lagos before 1876. In 1872 a petition of divorce was forwarded to the Governor-in-chief by the wife of a "recaptive" resident of Lagos.[2] Prior to this petition, the need for formalising procedures relating to matrimonial separation and divorce had not arisen. The colonial authorities abstained from interference with African customary practices and there had been no occasion of Christian divorce. The divorce in question involved a man and woman of the Christian faith, whose marriage had been solemnised according to Anglican rites. To meet this need, an ordinance was passed establishing a Court for Divorce and Matrimonial Causes.[3] The provisions of the ordinance followed those for divorce in England, but they also empowered the court to dissolve Christian marriages solemnised in any of the West African settlements, provided that one of the parties had been domiciled in a settlement for at least two years previous to the marriage. This last provision was later amended to allow only bona fide residents of Lagos to bring their suits before the court, as it was not thought "proper that a person residing permanently in Sierra Leone or the Gambia should be able to go Lagos and get his marriage

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1- This is implied in a letter written by the Chief Magistrate of Lagos, R.D. Mayne, to the Assistant Secretary of State, 20 July 1874, CO 147/30.

2- Pope Hennessey to Kimberley, 30 Nov. 1872, CO 147/24.

3- Ordinance 2 of 28 June 1872, CO 148/1.

dissolved".[1] The Divorce Court did not often sit, perhaps fortunately, for some four years later it was discovered that the composition of the court had not been provided for in the ordinance, and the court could not therefore legally be convened.[2]

The establishment of courts during the first decade and a half of British rule was therefore somewhat irregular. Although the Colonial Office could draw on a tremendous range of experience, from the West African coast to the colony of Hong Kong, no concerted effort was made to place the settlement's judicial system on a sound footing. This, it has been suggested, was the result of the Colonial Office's indifferent attitude to the fortunes of the Lagos settlement and to its overall commitment in West Africa, rather than legal principles or judicial practices.

Perhaps the most serious consequences of this neglectful attitude sprung from the persistent reluctance of London to provide professional men for judicial positions at Lagos. It was not enough to set up a rudimentary judicial system and expect it to function adequately in the hands of whatever merchants or military officers happened to be available on the spot. Qualified personnel were

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1- Ordinance 10 of 7 July 1873, CO 148/1; Kimberley to Pope Hennessey, 27 Jan. 1873, CO 147/24.

2- Chalmers to Freeling, 19 May 1877, in Freeling to Carnarvon, 14 Sept. 1877, CO 96/122. As further provision had been made by then for dealing with divorce and matrimonial causes, nothing was done concerning the illegal proceedings. Therefore all matters decided by the court until then were technically null and void, and all marriages dissolved by it were technically still in force.

needed to preside in the courts, to regulate their practices and procedures and to supervise the conduct of law enforcement agencies. Yet throughout these years the number of untrained men functioning in judicial capacities far exceeded those with legal backgrounds. Of the seven men who acted as Chief Magistrate, only three were qualified barristers or solicitors. Of the four remaining, two were writing clerks - one an elderly insolvent underwriter from Lloyds - one (McCoskry) was a merchant and the last was the Commander of the West Indian garrison at Lagos. Of the settlement's Police (Stipendiary) Magistrates - fourteen in all - none had any legal training whatever: four were merchants, six were military officers, two were colonial surgeons, one was a retired naval officer, and one was the deputy Collector of Customs.[1]

The need for more qualified legal personnel was apparent from the first years of the settlement's history. Governor Freeman had suggested the appointment of a Queen's Advocate as early as 1863; but although he and the legislative council considered the appointment of such an officer indispensable for the proper administration of justice, the authorities in London did not act.[2] In 1869 Administrator Glover complained that for want of a legal officer to advise him revenue measures could not be enacted.[3] And the following

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1- Petition of 11 Mar. 1875, in Capper to Lowther, 6 Aug. 1875, CO 147/31. In naming those who had served as the settlement's Chief Magistrate, the petitioners failed to include McCoskry and Lamb, Commander of the West Indian garrison, who acted in this capacity before Benjamin Way arrived in October 1863.

2- Freeman to Newcastle, 16 Aug. 1863, CO 147/5.

3- Glover to Kendall, 16 Nov. 1869, in Kendall to Granville, 26 Nov. 1869, CO 147/15.

year, Governor-in-chief Kennedy also suggested an increase in the settlement's legal establishment. His novel idea was to combine the offices of Law Adviser to the Administrator and Police Magistrate. On neither occasion, however, would the Colonial Office agree to an additional legal officer.[1] Even as late as 1876, after Lagos had been included in the Gold Coast colony, the need for more qualified men remained accute. At that time, it was complained that for more than a half year the colony had been left with only one legal officer who served as Chief Magistrate at Lagos, while a laymen acted in this capacity at Cape Coast.[2]

Colonial Office objections to additional legal personnel were purely on the grounds of economy. Although contending that measures such as that proposed by Kennedy would tend "to weaken the confidence of the people in the Administration of Justice",[3] the point at issue was not the legal one. The Colonial Office was well aware of the propensity for work to increase in the same proportion as the establishment, and that the appointment of one officer to do two jobs could only result in the need for yet another officer. But this is not to say that these arguments were capricious. With only a very limited amount of revenue available for the needs of the entire

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1- Kennedy to Kimberley, 6 Sept. 1870, CO 147/18; Kimberley to Kennedy, 11 Oct. 1870, Ibid.

2- Lees to Carnarvon, 10 Nov. 1876, CO 147/32.

3- Kimberley to Kennedy, 11 Oct. 1870, CO 147/18.

settlement, a choice had to be made between establishment expenses and necessary public works, between efficiency in government on the one hand, and the improvement of conditions in the settlement on the other. A balance had to be struck between the two, and in these early years of British rule, this did not allow for increases in judicial personnel.

For Lagos this meant that throughout this period there was never more than one legal officer with a professional background to perform the numerous duties connected with the settlement's courts. Instead these jobs had to be performed by non-professional men, who themselves were not underworked. Thomas Mayne, for example, while acting primarily as Stipendiary Magistrate, also acted as Proctor of the Vice-Admiralty Court, Commissioner of the Slave Court, Land Commissioner, and on occasion performed the duties of Commandant of Badagry and Commissioner of the Eastern District.[1] A not untypical situation occurred in 1871: the Chief Magistrate, Benjamin Way, left the settlement in March; the Police Magistrate returned to England six months later; the District Magistrate was aboard the colonial steamer "Eyo" in the Western District, "protecting British trade and traffic on Porto Novo waters"; the Commandant of the Eastern District was acting as Chief Magistrate, an African clerk performing his duties at Leckie; and the acting Police Magistrate, a merchant, was about to leave the settlement. Of the five judicial

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1- T. Mayne to Glover, 31 Jan. 1867, in Blackall to Buckingham and Chandos, 14 June 1867, CO 147/13.

posts in Lagos, only the Commandant of the Western District, Thomas Tickel, was acting in his appointed capacity.[1]

Without qualified legal officers presiding in the courts, well regulated procedures should have been imperative. In the absence of rules to govern court practices and procedures even a well supplied judicial system must assume an arbitrary character. Rules may be prescribed by law or recognised by constant usage. In Lagos, however, neither was the case. It could not have been expected that in the short period since the establishment of the first courts in Lagos in 1863, a body of rules governing court procedures would have assumed the force of law. In a settlement consisting largely of non-European people, with courts presided over, for the most part, by laymen, a legal enactment prescribing such rules should have been of the utmost concern to both the Lagos authorities and the Colonial Office. That this was not the case until 1870 was largely the result of the inattention to detail that characterised the formation of the early court systems in Lagos.

The fault did not lie wholly with the authorities in Lagos or London, although it could reasonably be expected that such an oversight would not go undetected. The Order-in-Council establishing the West African Court of Appeal in 1867 had made it the responsibility of the judges of that court to enact rules and regulations

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1- Glover to Kennedy, 16 Dec. 1871, in Glover to Kimberley, 18 Dec. 1871, CO 147/21.

for the three Courts of Civil and Criminal Justice.[1] The judges at Sierra Leone, however, had still not acted on this by 1870, and Chief Justice George French did not even seem aware of this obligation when it was brought to his notice.[2] Owing to this negligence, only the Gambia of the three West African dependencies had passed an Order of Procedure for their high court, or even laws to regulate the selection of juries;[3] and what obtained at both Lagos and the Gold Coast was a curious mixture of English legal practices and expediency as dictated by individual circumstances.

Procedure in the courts at Lagos appeared to follow English practices. In civil matters, suits were initiated by application to the court clerk for a writ of summons, which was then signed by the Chief Magistrate and served by the bailiff or a constable attached to the court. On a later date, specified in the summons, the case was then brought before the court for trial; The trial itself was also not unlike its English equivalent, but with two significant differences: firstly, there was no jury to decide the factual evidence of the case; and secondly, because this added to the responsibilities of the judge, it was usual for both parties to the action to make sworn statements previous to the calling of witnesses,

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1- Section 3 of Order in Council of 26 Feb. 1867, PC 2/265, 343-47.

2- French to Kennedy, 26 May 1870, in Kennedy to Granville, 27 May 1870, CO 147/18.

3- Minute by Barrow, 18 Apr. 1870, on Kennedy to Granville, 14 Mar. 1870, CO 147/17.

so that the court was fully aware of the disputed issues from the outset.[1]

While, outwardly, procedure in civil matters corresponded with practices in England, the likeness ended here. From the initial application for a writ of summons, through the process of service, to the appearance of both parties in court, there were no set rules to guide court officers. What was followed was largely the result of the individual practices of magistrates, clerks and bailiffs. There was no uniformity in the form of writs used, nor in the method of their endorsement; and in the absence of prescribed rules, the service of writs and the order of appearance of causes before the court was almost entirely at the discretion of court bailiffs and clerks.

In criminal matters procedure also largely resembled practices in English courts. In the actual trial, however, there were important differences. Because there were no qualified barristers practising in the courts in these early years, trials were conducted without the rigourous formalities of those in England, though similar in most respects to those conducted in the other settlements in West Africa. The defence - nearly always conducted by the accused himself - would have been ruled out of order in an English court: testimony on its behalf was seldom pertinent to the circumstances of the crime in question, and tended to obscure the issues before the court; and cross examination was more an attempt to shout

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1- Mayne to the Assistant Secretary of State, 20 July 1874, CO 147/30. Although Mayne did not become Chief Magistrate until 1871, this procedure, according to him, had been in use well before his arrival.

down the witness than to refute his testimony by interrogation.[1] Furthermore, without counsel for defence, the responsibility for a thorough investigation into the facts of the crime in the interests of the accused rested with the court. In preliminary hearings, all issues, both for and against the defendant, had to be examined, and at the trial the court encouraged and assisted jurors to interrogate witnesses after general examination had been concluded.[2]

The absence of rules of procedure and qualified personnel in the courts resulted in more than a disregard for formalities. In the Court of Civil and Criminal Justice, for example, there were a number of irregularities in cases that were tried before Chief Magistrate Benjamin Way.[3] From these cases, it appears that Way continued to employ prosecution by indictment, even though this had been abolished by an earlier ordinance and was not re-established by the court's most recent constitution. The summoning of grand juries to hand down indictments, although illegal, was not an especially repugnant procedure; however, Way also regularly framed indictments for his own court, which meant that at times the Chief Magistrate was acting virtually as prosecutor and judge in a single case.[4]

1- A fair example of a criminal trial at Lagos during this period can be found enclosed in Kennedy to Kimberley, 9 June 1871, CO 147/20.

2- Chalmers to CO, 13 Nov. 1876, in Strahan to CO, 22 Nov. 1876, CO 96/119.

3- Way was Chief Magistrate from 1863 to 1871.

4- Kennedy to Granville, 14 Mar. 1870, CO 147/17; Montague to Kennedy, 1 Dec. 1869 and 17 Jan. 1870, in Ibid.

Way was further guilty of rather poor judgement as regards the officers of his court. He had given the responsibility for empanelling juries to the court clerk, S. Wilkey, without any law, rule or qualification to guide him. Without such a guide, Wilkey selected jurors according to his own inclination, and hardly in conformity with accepted practices. Moreover, Way had allowed him, while employed as clerk of court and interpreter, to practice as an attorney.[1] Nothing could have been more designed to shake confidence in the court's proceedings: the clerk of court summoning the jury without any rule governing the procedure, and acting simultaneously as court clerk, interpreter and, perhaps, attorney for the defence as well.

Chief Magistrate Way was not entirely culpable. He had not been empowered to make rules "touching the forms and manner of proceedings and the practices and pleadings in the Court of Civil and Criminal Justice". As a consequence, it was illegal for him to summon a grand jury, or for that matter even a petty jury. This had been the prerogative of the judges of the West African Court of Appeal, who had neglected their responsibility, leaving Way "to scramble through the business (of the court) legally or illegally as best he could". In fact, the Queen's Advocate at Sierra Leone was of the opinion that the Court "never had and has not the necessary machinery to enable it to proceed with business in any civil or

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1- Ibid.

criminal case". Moreover, if rules of court had been framed and were not observed, the Administrator, not the Chief Magistrate, was responsible to correct this.[1]

When the irregularites of the high court's proceedings finally came to the attention of the authorities in 1869, it was necessary to "legalise" them and ensure against repetition. Two ordinances were enacted. The first indemnified the Chief Magistrate and the other officers of the court for all acts done in pursuance of criminal matters. As the procedure for selecting both petty and grand juries - and the use of the latter - was not in accordance with legal practices, the ordinance also declared valid all criminal trials held by the court.[2]

The second ordinance established laws relative to the selection and qualifications of jurors, and the procedure by which prosecutions were to be initiated. By its provisions, grand juries were abolished; all future criminal prosecutions were to be by information and had to be referred to the Court of Civil and Criminal Justice by one of the settlement's magistrate courts. The selection of petty juries would henceforth come from an annually prepared list of jurors, summoned alphabetically. Qualifications for prospective jurors were quite high and could not have been met by the greater majority of the island's inhabitants: a financial qualification greatly lim-

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1- Montagu to Kennedy, 17 Jan. 1870, in ibid; minute by Rogers, 29 Apr. 1870, on ibid.

2- Ordinance 5 of 11 Apr. 1870, CO 148/1.

ited the number of potential jurors, whilst the requirement of a sufficient knowledge of English practically excluded the entire indigenous population. A further provision explained the method by which juries would reach verdicts: in capital cases, unanimity was required, but in all others a majority of the jury was sufficient to determine the verdict.[1]

The irregularities of the high court were indicative of the way legal institutions functioned in these early years. Without rules to regulate procedures or adequate supervision, there were no safeguards against arbitrary practices. To cite another example, in 1872 a man accused of murder was convicted in such a fashion that the Colonial Office was forced to step in and reverse the death sentence. The prisoner had been indicted on a coroner's deposition which, though not illegal, was a rarely used practice and one that was generally discouraged. More important, the inquest itself had been conducted without any regard for the prisoner's rights or for legal procedures. During the course of the inquest, the prisoner had been questioned without any warning that his evidence could be used in court against him. Furthermore, although the verdict of culpable homocide was signed by the coroner and twelve jurors, on the last day of the inquest, which lasted three days, only six of the jurors were present.[2]

1- Ordinance 6 of 2 June 1870, CO 148/1.

2- Pope Hennessey to Kimberley, 3 Dec. 1872, and enclosures, CO 147/24.

Proceedings at the inquest had been conducted by the Superintendent of Police, Isaac Willoughby, who usually acted as coroner's clerk in addition to his police duties. Finding himself unable to gather all twelve jurors together on the last day, he nevertheless proceeded with the evidence against the prisoner. The next day he related his account of what transpired the day before to the six absent jurors, who then signed the deposition. And it was on the basis of the coroner's deposition, used by the Crown Prosecutor at the actual trial, that the prisoner was found guilty.[1] Because of this callous disregard for legal procedure, and despite the overwhelming evidence against the accused, the death sentence had to be commuted to life imprisonment. In order to avoid future dependence on coroner's depositions, the Lagos authorities were instructed to conduct trials on separate informations without any reference to the coroner's inquest. It would therefore be immaterial whether this was regularly conducted or not.[2]

According to one observer, Willoughby's management of the coroner's inquest was a "fair example of the way in which the preliminaries of justice were generally manipulated" by him. People were arrested and locked up when he thought it necessary, without any formal charge being preferred, and released the following morning

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1- Ibid.

2- Kimberley to Pope Hennessey, 13 Jan. 1873, CO 147/24.

before the Police Magistrate Court convened. Willoughby, according to the same observer, even decided cases in his own house.[1]

Even more damaging to the administration of justice were the corrupt practices that found their way into matters connected with the settlement's courts. Much of this was the result of low paid officials in a new system without adequate checks on individual behaviour. But there were other causes as well: public officers were not prohibited from carrying on trade while engaged in the colonial service, and in a number of cases speculation in business had led officials to embezzle public funds in order to cover their losses.[2] By 1870, this had become so widespread a problem that the administration was forced to regulate the trading practices of colonial officials. All "higher" public officers were strictly forbidden to carry on trade "either directly or indirectly by their wives or relatives". Officials in "humble position" were allowed to continue their commercial activities provided they were approved first by the Administrator, who could refuse if "the public interests might suffer".[3]

1- Memorandum by J.A. Payne, July 1872, in Pope Hennessey to Kimberley, 3 Dec. 1872, CO 147/24.

2- See, for example, Kennedy to Granville, 21 Mar. 1870, and enclosures, CO 147/17; Yonge to Buckingham and Chandos, 14 Oct. 1867, and enclosures, CO 147/13; Kennedy to Kimberley, 9 June 1871, and enclosures, CO 147/20; Pope Hennessey to Kimberley, 14 Oct. 1872; Strahan to Carnarvon, 18 Jan. 1876, and enclosures, CO 147/32.

3- Kennedy to Granville, 21 Mar. 1870, CO 147/17; Granville to Kennedy, 21 Apr. 1870, ibid. See also, Kopytoff, A Preface to Modern Nigeria, 206-07. It can be doubted that this regulation was enforced. There was no clear definition of what could be regarded as a "humble" as opposed to "higher" position in the colonial service, and the Civil Commandant at Badagry, for one, continued his trading practices until he resigned in 1878; Ussher to Hick Beach, 22 Oct. 1879, CO 147/38.

In the highly charged commercial atmosphere of Lagos, it is not surprising to find that corruption also appeared in the administration of justice. In 1870 it was discovered that for some time past the clerk of the Court of Civil and Criminal Justice had been retained by creditors to recover debts for them which were overdue. He had been accepting money from individual creditors, supposedly for writs and court fees, without issuing the writs or paying the money into the colonial treasury. By virtue of his position in the court, he was able to threaten debtors, and in this way recover debts that were not free from contention. He and the bailiff had also obstructed justice by not serving summonses on defendants who bribed them. When plaintiffs inquired about service, they were put off for as long as possible with excuses. Only after threats to bring the matter to the Administrator's attention would the writs be served, and then only if the plaintiff could no longer be "brow-beaten". The two acted similarly with writs of execution. Ordinarily, these writs should have been issued if payment or some other arrangement had not been made within four days of the court's judgement. However, if they were promised a "commission" - sometimes as much as 20% of the amount declared by the court - writs would be served immediately; otherwise, service might take weeks or even months.[1]

This sort of corruption was not limited to minor court officials.

1- Examination of I.H. Willoughby, 3 Mar. 1870, in Kennedy to Granville, 14 Mar. 1870, CO 147/17.

The Police Magistrate from 1869 to 1872, J. Gerard, was accused of showing partiality in favour of a European merchant, a widow, to the prejudice of African traders who had dealings with her. It was charged that Gerard, in his capacity as President of the Court of Requests, continually handed down favourable decisions for her firm of E. Pittaluga, the implication being that he had some business connection with her.[1] Although no evidence was brought to bear at the time, the charge was substantially correct. It was later revealed that Gerard had been unofficially advising the widow on commercial matters for some time past; and after he was relieved of his position as Police Magistrate in 1871, he became her accredited agent in Lagos, acting on her behalf by power of attorney.[2]

Such practices were not always the result of corrupt officials. Throughout this period, as well as afterwards, minor court positions were filled by members of the emigrant community whose "western" education was largely limited to an ability to read and write. With only an imperfect knowledge of the more intricate court procedures, these officials often behaved in what appeared to be a dishonest way. In one instance, a clerk of the high court, J.A. Payne, was "severely censured" for what seemed to be extortion on his part. In 1866, the honorary title of Sheriff of Lagos had been bestowed upon him for the specific purpose of attending to the hanging of a convicted

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1- Petition of 31 Aug. 1871, in Kennedy to Kimberley, 27 Nov. 1871, CO 147/21.
2- Minutes of the legislative council, 21 Mar. 1872, CO 149/1.

murderer. The appointment was not intended to be permanent; however Payne continued to use the title. In 1872, the acting Administrator recognised Payne's claim to the honorary title and the fees which that office brought as compensation for additional work that he had been asked to do. Sheriff's fees entitled him to a 5% "poundage" for arranging the sale of property or chattels as ordered by the court; but Payne instead claimed 5% "on all sums of money and on the value of all property awarded as debt or damages in the courts". It was charged that he was making "something like £2,000 per annum" from these illegal fees; but there was insufficient evidence to support this figure, and apart from the censure, he was only deprived of his right to collect poundage.[1]

The administration of justice in this early period was further marred by a continual conflict between the aims and purposes of the executive and judicial branches of the government. Though never well articulated, Colonial Office policy tended to oppose any interference with the judicial prerogative. Legal officers were encouraged, on the whole, to maintain their independence from executive control, and any infringement of the judicial prerogative by Administrators or Governors was promptly censured.[2] Nevertheless, it was impossible for the colonial judiciary to remain completely in-

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1- Lees to the Under Secretary of State, 26 Aug. 1875, CO 147/31; Capper to Lowther, 6 Aug. 1875, and enclosed petition of 11 Mar. 1875, Ibid.; Marshall to Wingfield, 7 Aug. 1882, CO 147/52.

2- See, for example, Lees to Carnarvon, 21 Aug, 1876, and enclosures, CO 147/32; CO to Lees, 10 Oct. 1876, ibid.

dependent. The executive was ultimately responsible for the preservation of order, among other things, and this could at times be secured only by extra-legal means. In such circumstances, judicial compliance was sought, and its refusal resulted in conflict between the two branches of government. Invariably, the dispute became one of personal recrimination and abuse; but its roots remained primarily the incompatibility of English judicial concepts in the colonial context.

This was well illustrated during the administration of John Glover. Under Glover, the power of the Superintendent of Police, Isaac Willoughby, increased to such an extent that he was spoken of in Lagos as "the second or little governor". At times this power exceeded reasonably accepted legal standards, but it was always exercised with at least the tacit consent of the Administrator,[1] and in the interests of the government. When his quasi-legal acts were brought to the attention of the Police Magistrate, Gerard, he put an end to them, and Glover never forgot this. Later in 1871, when a petition to have Gerard removed from his office was drawn up by members of the Lagos community, Glover seized the opportunity to condemn his conduct on the bench and to ask for his resignation.[2] In the end, Gerard was not made to resign, but neither was the con-

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1- Pope Hennessey to Kimberley, 14 Oct. 1872, enclosing memorandum by J.A. Payne, July 1872, CO 147/24.

2- Petition of 31 Aug. 1871, in Kennedy to Kimberley, 27 Nov. 1871, CO 147/21; Glover to Gerard, 8 Sept. 1871, in Ibid.

flict between the executive and judiciary - which was at the bottom of the dispute - satisfactorily resolved. Gerard returned to the settlement after leave at the end of the year, but he did not resume his magisterial duties.[1] In this way, the borderline between executive and judicial responsibility in Lagos remained obscure and liable to subsequent misinterpretation.

In general, therefore, the early court system in Lagos lacked the features necessary for a proper administration of justice. The personnel presiding over the settlement's courts were seldom qualified for their positions, and even those with legal backgrounds were not of a very high caliber. Of Chief Magistrate Way, a solicitor, it was said that he "was ignorant of law ... and wholly unfit for the important position he holds"; and his successor, R.D. Mayne, who was a barrister, was held in equally poor esteem.[2] Neither were there proper safeguards, in the form of rules and regulations, to make certain that justice was done in accordance with accepted practices. Without either regulation to ensure conformity, or trained personnel to act as overseers, the judicial system estab-

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1- Gerard was replaced by J. Finlay in December 1871. See, Blue Book for 1871, "Judicial Establishment", CO 151/9.

2- Kennedy to Granville, 14 Mar. 1870, CO 147/17. Mayne was described by a subordinate as having an indolent dispostion, and "not a man who will ever make any mark in the world". Once, Mayne refused to hear an assault case on the ground that the action had taken place at Porto Novo, outside British jurisdiction. He had to be reminded by the complainant that the Extra-Territorial Jurisdiction Aft of 1871 (34 Vict. c. 8) empowered colonial courts to deal with offences committed against British subjects within 20 miles of a British settlement. Porter to Glover, 18 Oct. 1872, G.P., V; Turton to Glover, 18 Sept. 1872, Ibid.

lished in these early years lacked the fundamental guarantees of a legal system - that justice should be meted out impartially, along known or ascertainable lines. These deficiencies were directly attributable to the general lack of interest in London in the details of administration in West Africa and in Lagos in particular. As the island had been an unwanted commitment, it excited only limited concern for what was actually happening there. So long as this remained true, and Lagos was viewed as an unimportant, burdensome responsibility, the settlement's judicial system would remain neglected.

Chapter III

The Establishment of the Supreme Court, 1876-1905

The judicial systems of the West African settlements were a compromise, dictated by the economic and political precepts of mid-Victorian England. Jurists recognised their shortcomings, but were inhibited from altering a structure that served immediate purposes. In particular, Parliamentary opinion in the 1860's was set against any elaboration of rudimentary institutions that would entail greater expense for the Imperial Treasury, or mitigate Parliament's declared intention to withdraw from most of her West African commitments. In these circumstances, proposals for long-term improvements from officials on the coast were either turned down or, if accepted in principle, implemented too slowly to achieve results. Complaints that judicial procedures were too complicated to suit the circumstances in West Africa, or that the legal structure itself was too complex were met by suggestions that legislation be gradually introduced to correct these faults, instead of a re-examination of the basis of the system.[1] The results - as has been shown - were inefficiency, malpractices and corruption.

The Colonial Office was reluctant to countenance wholesale

1- Kennedy to Granville, 13 Feb. 1869 and enclosures; Granville to Kennedy, 6 Apr. 1869, CO 268/52.

reform in West Africa, because reform of legal structures meant additional expenditure. This overall reluctance, however, did not prevent colonial officials on the coast from continuing their efforts in this direction. As the seat of government for the West African settlements, Sierra Leone was faced with the dual problems of modernising its own judicial system, while providing the framework into which those of the other settlements could be fitted. Of the first, there had been some re-organisation in 1858 when the Courts of Recorder, Quarter Sessions and Chancery were united into one Supreme Court under a Chief Justice.[1] Further re-organisation took place in 1866 when the West African settlements were united and the Sierra Leonean Supreme Court became the Court of Appeal from the three Courts of Civil and Criminal Justice. But these proved halfway measures that never fully satisfied the reforming zeal of West African jurists. Besides, the provisions of the 1866 arrangement for a circuit court system were never implemented.

In 1871, therefore, proposals were advanced to reshape the court system at Sierra Leone while at the same time bringing together the judicial systems of the other settlements. As in 1866, the main point of the proposals was to combine the four West African judicial systems into one common Supreme Court. The court would be constituted by the judges of each settlement, any one of whom would be competent to hear all causes in any of the settlements.[2]

1- C. Fyfe, A History of Sierra Leone, London 1962, 279.
2- Higgins' proposals in Kennedy to Kimberley, 19 Oct. 1871, CO 267/312.

In this way, the lack of sufficient legal personnel at one place could be made good by a temporary replacement from another.

The Colonial Office was not unsympathetic towards these proposals; indeed, Rogers' successor as Permanent Under Secretary of State, H.T. Holland, later Lord Knutsford, expressed favourable opinions of the arrangement. Yet at the same time he chose to reiterate his preference for the scheme originally proposed in 1866, based on a circuit court system. He held West African magistrates in poor regard and thought that a circuit system would curtail the practically unlimited jurisdiction being exercised by them. Periodic visits by judges would facilitate arrangements for appeal from magistrates' decisions; "practically", he complained, "their decisions now are final".[1]

By championing the earlier proposals for a circuit court system, Holland helped to complicate the issues at stake: some objections were raised to the idea of a common Supreme Court on purely administrative grounds, but these were not formidable.[2] But the arguments against a circuit court system were as telling in 1871 as they had been five years before. Additional judges would have to be employed, and their effectiveness would be substantially curtailed by the amount of time wasted in travelling between the settlements. Since the Governor-in-chief, Arthur Kennedy, was not prepared to agree to any alteration of the judicial system, without assurances

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1- Minute by Holland, 18 Nov. 1871, on ibid.
2- Kennedy to Kimberley, 19 Oct. 1871, CO 267/312; Alston to Kennedy, 22 Dec. 1871, in Kennedy to Kimberley, 3 Jan. 1872, CO 267/315.

that the necessary personnel would be provided, he objected to Holland's proposals, suggesting instead that salaries to local magistrates be raised in order to attract better men to these positions.[1] With Kennedy opposed to a circuit court system, the Colonial Office did not proceed with the idea; but it was recognised that some improvement had to be made in the judicial systems of West Africa.[2]

The failure to achieve any reform of the West African judicial systems must be viewed as part of the larger picture that represented official attitudes towards the coast. Even in 1871, the prevailing mood was one of apathy as regards administrative problems and overt opposition to anything that increased Britain's commitment there. The proposal to form one common Supreme Court for all the settlements would not necessarily have involved enlargement of individual judicial establishments; but it would have required a large degree of administrative integration, forcing a re-appraisal of Parliament's intention to withdraw from all of West Africa, except Sierra Leone. As there was no compelling reason in 1871 to review the decision of 1865, the proposal for a common Supreme Court was not even considered on its judicial merits. Similarly, although it was admitted that improvement of the existing systems was necessary, it was also recognised that improvement meant in-

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1- Kennedy to Kimberley, 3 Jan. 1872, CO 267/315.
2- Minute by Holland, 2 Feb. 1872, on ibid.

creases either in the salaries of local magistrates or in the number of legal officers on the coast. Either alternative was incompatible with the Select Committee's recommendations for economy. For political or economic reasons, therefore, the judicial systems of the West African settlements remained in an unsatisfactory state.

In Lagos, conditions that had previously led to malpractices and corruption remained largely unaltered even as late as 1874. Rules and regulations governing procedures in the courts were still not formally established by ordinance. By then, too, there were pressing needs for legislation that had been put off over the years, and for clarification of existing laws. The Police Magistrate Court still lacked a formal constitution, and no provision had ever been made for the registration of legal documents. Moreover, great confusion obtained at Lagos as regards the validity of local ordinances. "At present", it was complained,

> "it is impossible to find out whether a given Ordinance has been confirmed or not. And there is great danger of important acts being done on the authority of Ordinances which have not been confirmed at all". 1

It was also generally acknowledged at the time that the existing court system was both cumbersome and wasteful. The settlement's three main courts - the Court of Civil and Criminal Justice, the Court of Requests and the Police Magistrate Court - would have been better controlled and served, it was argued, by being united under the settlement's Chief Magistrate. In the two years previous to

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1- Mayne to Under Secretary of State, 16 May 1874, CO 147/30.

1874, the Chief Magistrate Court had not sat more than three or four days each month, and on average even less. The Court of Requests usually convened once a week, but then for only two or three hours. And the Police Magistrate Court, though it met daily, was in session for only two hours in the morning at most. In fact, Chief Magistrate R.D. Mayne had presided over all three courts for a period of almost two months and had not found the work in any way oppressive.[1]

Although the Colonial Office agreed with the criticism of the Lagos judiciary and the suggestion that unification of the three courts would be an improvement,[2] once more, larger considerations of West African policy had to be taken into account. In Lagos, the 1870's had seen an end to the settlement's prosperity. The Franco-Prussian war interfered with the demand for palm-kernels and -oil, slowing the progress of colonial revenues. Necessary expenditure had to be postponed, and the payment of government salaries fell into arrears. In the end, money had to be borrowed to meet the settlement's obligations.[3] These financial matters provoked a weight of opinion at the Colonial Office in favour of greater financial interdependence in West Africa: "fluctuations in the revenues of the different settlements", the argument went, "would thus correct each other and administration would be facilitated."[4]

1- Ibid.
2- Minute by Holland, 24 May 1874, on ibid.
3- Simpson to Kennedy, 1 Dec. 1870, in Kennedy to Kimberley, 12 Dec. 1870, CO 147/18.
4- Minute by Herbert, 3 Jan. 1871, on ibid.

But the amalgamation of the four West African settlements had been attended with difficulties since its inception, chiefly because of the distances that separated the western settlements at the Gambia and Sierra Leone from the Gold Coast and Lagos. Greater centralisation along the entire coast was therefore not feasible; but there was much to be said for separation of the eastern settlements from the central government at Freetown. Financially, the more prosperous Gold Coast would act as a buoy for her sister settlement to the east, and the travelling time between the two would not prohibit movement of officers from one to the other, as and when the need arose.[1]

There was more than just the financial argument. A new generation of men had emerged at the Colonial Office with views on West Africa that were more realistic than their predecessors'.[2] An effective policy in West Africa - they realised - could not be carried out within the restrictions imposed by the resolutions of 1865.[3] With the outbreak of the Ashanti war in 1873, the impetus for change was provided. The vacillating policy of the 1860's had been proved bankrupt: Britain was involved in what she had tried to avoid by confining her settlements to small enclaves on the coast - an unwanted military campaign against a formidable African

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1- Minute by Herbert, 6 Feb. 1872, on Kennedy to Kimberley, 2 Jan. 1872, CO 147/23.

2- R.G.W. Herbert became Permanent Under Secretary of State in 1871, R.H. Meade Assistant Under Secretary of State the same year, and A.W.L. Hemming Chief Clerk for West Africa in 1874.

3- See, for example, memorandum by Hemming, 1 Apr. 1874, CO 806/12, cited in Hargreaves, Prelude to the Partition; 170.

opponent. A choice, therefore, had to be made; whether to remain in West Africa in strength, or to comply with the Parliamentary resolutions of 1865 and withdraw. The choice to remain in West Africa was made in more realistic terms, and this resulted in the formation of the Gold Coast colony which included the settlement of Lagos.[1]

For the judicial systems of both Lagos and the Gold Coast, the amalgamation marked the end of their rather haphazard development. With the new climate of opinion brought about by the changed economic and political circumstances on the Gold Coast, the time had come when the complaints and proposals of the past decade could be countenanced. There were, however, several new factors that had to be taken into account as well. In the first place, the Gold Coast being an amalgam of different coastal areas, some of which only recently coming under British control,[2] any judicial system had to be sufficiently comprehensive to allow for the different levels of development at each place. Next, the inclusion of Lagos in the new colony forced those concerned to widen still further the scope of the new legal structure in recognition of the peculiar circumstances of that place. And thirdly, the decision to remain in West Africa in a positive way meant that the judicial system conceived at this time had to be sufficiently elastic to admit for the future growth

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1- By Letters Patent of 24 July 1874, the settlements on the Gold Coast and Lagos were erected into one colony.

2- There were territorial exchanges between the Dutch and Britain in 1868, and in 1872 the Dutch were bought out altogether. See, D. Kimble, A Political History of Ghana, 1850-1928, London, 1963, 223-224, 269-270.

of the colony.

These considerations above all coloured the thinking of those in London whose responsibility it was to provide the Gold Coast colony with a new judicial system. A pragmatic approach to legal problems in West Africa, based on the recommendations of colonial officials on the coast, had to be discarded for a more widely applicable solution to a host of problems, some of which bore scant relation to each other. Although individual opinions of officers on the coast were entertained in matters of detail, the general outline of the new judicial system was primarily of Colonial Office conception.

At the Colonial Office, solutions to West African problems were largely influenced by what obtained at the time in England, and what had proved successful in the eastern colonies. In 1873 the archaic English legal system, with its three classes of courts, had been reformed. The Judicature Act of that year combined in one system the existing superior courts, and modified the procedure to be followed in them. A Supreme Court of Judicature was created, consisting of a High Court of Justice and a Court of Appeal. Procedure in the High Court was simplified: trial by jury, which had been the rule in the Courts of Common Law but not in Chancery, was now made a matter of convenience in all courts, that is, the choice of both parties to the cause; and whereas evidence had been given only orally in the former courts and by affidavit in the latter,

now it could be rendered orally in both.[1]

The Judicature Act of 1873 achieved two things that were later employed by the Colonial Office in determining the judicial system to be established on the Gold Coast: all the courts in the country were united in the one High Court of Justice, and procedure in the courts was simplified and made uniform. But the situation in West Africa hardly resembled the circumstances in which English courts had to function. For more similar conditions, the Colonial Office looked to their colony of Hong Kong, and it was from the details of its legal system that the Gold Coast judiciary received its character. While the impetus for a unified legal structure came from changes in the English legal system, the groundwork of the Supreme Court Ordinance of 1876, which established the Supreme Court of the Gold Coast, is to be found in the Hong Kong Civil Procedure Code of 1873.[2] Only in some of the minor points, pertaining to procedure, were West African opinions solicited. It was realised that existing practices in West African courts, though founded on procedure in England, were "too complicated and technical to work satisfactorily";[3] and it was to assist in these details that the Colonial Office had the Queen's Advocate at Sierra Leone, David Chalmers, transferred to the Gold Coast as Chief Justice designate of the soon to be established Supreme Court.[4] With Chalmers' assistance,

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1- F.W. Maitland and F.C. Montague, A Sketch of English Legal History, London 1915, 165-169.
2- Redwar, Comments, 47.
3- CO to the Governor of the West African settlements, 20 Jan.1874, CO 267/327; minute by Fairfield, 20 Sept. 1874, on Marshall to Herbert, 18 Aug. 1874, CO 96/114.
4- CO to Berkeley, 24 July 1874, CO 267/326.

E.D. Fairfield, R.G.W. Herbert and Sir Julian Paunceforte in London drafted the final version of the ordinances that established the judicial system of the Gold Coast Colony.[1]

In 1876, a Supreme Court of Judicature was established for the Gold Coast colony, consisting of a Chief Justice and four Puisne Judges.[2] The Full Court, that is, at least two judges, one of whom had to be the Chief Justice or his surrogate, was constituted a Court of Appeal from lower court decisions. In all matters brought before the Full Court, decisions were reached by majority vote, the Chief Justice having a casting vote when the court sat with only two judges.[3] In civil cases, appeals from judgements of lower or Divisional Courts could be made where the claim in

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1- Ordinances 4 and 5 of 31 Mar. 1876. These ordinances can be found in Stallard and Richards, Laws of the Colony of Lagos.

2- Although the Supreme Court was established by Ordinance 4 of 31 Mar. 1876, the court did not begin to function until 7 April the following year. The provisions of the Supreme Court Ordinance of 1876 are outlined in Elias, The Nigerian Legal System, 67-78.

3- Ordinance 4 of 31 Mar. 1876, Sections 3-7. There had been some disagreement over the constitution of the Full Court, and the method by which appeals should be made. Fairfield was in favour of having two of the court's judges conduct a rehearing in the first instance, rather than having an immediate recourse to an appeal. If their decision remained contested, a Full Court of three could then be convened. Chalmers, however, objected to the proposal for an intermediate hearing as time wasting and to the Full Court having to comprise three judges. This - he contended - would denude the remainder of the colony of its entire judicial force, unless the Colonial Office was prepared to increase the number of judges stationed in the colony. As the Colonial Office had no desire to increase personnel in a court not yet established, Chalmers' objections were taken, and the Full Court therefore required only two judges to be constituted. Minute by Fairfield, 6 Nov. 1874, on Strahan to Carnarvon, 27 Sept. 1874, CO 96/112; Chalmers to Strahan, 4 Sept. 1875, in Strahan to Carnarvon, 6 Sept. 1875, CO 96/116.

question involved £50 or more. In criminal cases, appeals could be made against the original judgements of Divisional Courts or against decisions on appeal in these courts that reversed the findings of the lower court. This procedure applied for cases tried summarily as well as those tried on information.[1] The Full Court also had the power to "entertain any application in reference to any suit or matter pending before the (Supreme) Court in any Province, and to make any order and give such directions" as the case required. Questions of law could be reserved for consideration by the Full Court, the judgement of the court of first instance being postponed until such questions were decided.[2]

For jurisdictional purposes, the colony was divided into provinces and districts. Lagos and its "protected territories" became the eastern Province of the colony, with districts corresponding to areas formerly under the control of District Magistrates or Civil Commandants.[3] Divisional Courts were to be held in each province (there were three in the colony) monthly, and presided over by a judge; and each district was to have its own court presided over by a commissioner of the Supreme Court.[4] The jurisdiction of District Commissioner and Divisional Courts depended on the juris-

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1- Ordinance 4 of 31 Mar. 1876, Sections 51-53; ordinance 5 of 31 Mar. 1876, Order L III.
2- Ordinance 4 of 31 Mar. 1876, Sections 54-55.
3- The "protected territories" and the districts at Lagos are discussed in chapter VI.
4- Ordinance 4 of 31 Mar. 1876, Sections 22-25, 34-35.

diction individual commissioners were authorised to exercise. This could be any or all of the Supreme Court's jurisdiction in that particular district, and if the two parties to a suit agreed, the commissioner could determine cases in which the claim exceeded his jurisdiction by up to twice the authorised amount.[1]

District Commissioner Courts exercised a summary jurisdiction in all cases. Appeal in criminal cases could be made in every instance to the Divisional Court of the province, and in civil actions, if the amount in question involved at least £5.[2] All other civil and criminal cases, beyond the jurisdiction of commissioners, were to be heard and determined in Divisional Courts before a Judge. In addition to this jurisdiction, judges also possessed a summary jurisdiction over criminal actions other than felonies, larceny, embezzlement or receiving stolen property, provided the offence could be punished with imprisonment not exceeding nine months, or a fine not exceeding £100 and imprisonment for up to three months.[3]

The division of the colony into jurisdictional districts fell naturally along geographical lines. For the convenience of suitors and witnesses alike, local venues were desirable, and it was to the colony's advantage to have crime dealt with in the locality in which it was committed. It was generally agreed that commissioners should possess a limited and well-defined authority, the amount of juris-

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1- Ordinance 5 of 31 Mar. 1876, Order X, Rules 1-2.
2- Ibid., Order LIII.
3- Ibid., Section 47.

diction varying in accordance with the individual's qualifications and the character of his district. In remoter areas it was considered more expedient for them to have greater authority in order to avoid as far as possible delays in hearing cases.[1] The departure from the more usual practice of granting limited summary jurisdiction was prompted by the difficulties courts met in obtaining the attendance of interested parties. Experience had shown that after the preliminary examination witnesses and even the complaining party would not bother to return for the actual trial. By extending the summary powers of judges to most non-felonies, it was hoped this difficulty might be overcome; and the benefits of a trial before a Supreme Court judge would not be denied to this class of offenders.[2]

The officers of the Supreme Court corresponded roughly to those of the former Court of Civil and Criminal Justice. The Inspector-General of the Colony became Sheriff with the responsibility for executing the judgements and orders of the court. Each Divisional Court had assigned to it a Registrar, an Interpreter and a Messenger. Besides his regular court duties, the Registrar became Taxing Master for the court - a job involving the assessment of bills of costs. Provision was also made for the appointment of Deputy Registrars to assist when necessary in District Commissioner

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1- Chalmers to Strahan, 4 Sept. 1875, in Strahan to Carnarvon, 6 Sept. 1875, CO 96/116; minute by Fairfield, 6 Nov. 1874, on Strahan to Carnarvon, 27 Sept. 1874, CO 96/112.

2- Chalmers to Strahan, 4 Sept. 1875, in Strahan to Carnarvon, 6 Sept. 1875, CO 96/116.

Courts.[1] The only alteration of significance in the court's officers was in the position of Sheriff. Hitherto, that office had largely been an honorary one, and had, in fact, be discontinued at Lagos after 1872. Under this new arrangement, the Sheriff became responsible for executing the court's orders and judgements in place of the Registrar. This was decided upon primarily to relieve the judges of the court of direct supervision over these matters.[2]

Procedure in the courts was designed for simplicity, In summary trials the substance of the charge was given to the accused, and if its truth was admitted the court could then convict him forthwith. If the truth of the charge was denied, the trial would then proceed. Evidence was tendered by the prosecution and the defence, with the prosecution's case being presented first. At any stage during the proceedings, the court could put questions to the accused. The decision was then a matter for the court, that is, the commissioner or the judge, alone. If in the course of the hearing, it appeared to the court that the offence being tried could more suitably be entertained by less summary methods, the accused could be committed for trial by information in the monthly Assizes.[3]

Trial by information had replaced the more cumbersome procedure of indictment by grand jury in England and the colonies in the

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1- Ordinance 4 of 31 Mar. 1876, Sections 56-70.
2- Chalmers to Strahan, 4 Sept. 1875, in Strahan to Carnarvon, 6 Sept. 1875, CO 96/116.
3- Ordinance 5 of 31 Mar. 1876, Sections 49-63.

previous decade. Like indictments framed by grand juries, informations required a preliminary investigation of the charges brought against an accused which satisfied the court that a reasonable case could be made against the prisoner and that the offence could not be dealt with summarily. In most cases, informations could not be filed without a hearing which largely resembled the proceedings in a summary trial. Indeed, at the preliminary hearing where it appeared to the court that the offence could be adjudicated summarily, the case could be determined then and there.[1]

There were two methods of proceeding with trial by information. If the charge was a capital one, the trial was to be heard by the court with the assistance of a jury of twelve men, seven of whom were to be "Special jurors" when possible.[2] For all other charges, it was provided that the Governor by Executive Order could appoint any offence or class of offences to be tried before a jury; these orders could be applicable either throughout the colony or in specific districts or places. Those accused of offences covered by such orders had the option of being tried before the court sitting alone, or with a jury of at least seven men.

In trials with juries, if the accused was not a native of the colony or countries subject to the court's jurisdiction, the court could direct that up to one half of the jury had to be non-natives.

1- Ibid., Sections 64-79.
2- Special Jurors were chosen from the jury lists compiled annually and were prominent members of the community, such as, chiefs, clerics and businessmen.

Three peremptory challenges of jurors were allowed, and unlimited challenges for cause. In all cases jury verdicts were to be unanimous.[1] Jury qualifications could easily be met. All men between the ages of twenty and sixty, whether literate or not, and resident within the jurisdiction of the Supreme Court were qualified to serve as jurors. The preparation of annual jury lists for each district was the responsibility of individual commissioners, and it was the Sheriff's duty to empanel all juries, selecting jurors by ballot.[2]

All other informations tried without juries were heard with the aid of assessors. Three were usually present at such a trial, selected previously from the Special Juror list. In cases heard by a judge and assessors, the decision of the court was the prerogative of the judge alone; the aid rendered by assessors was in the form of opinion only. Assessors' opinion could influence the court's final verdict, but the decision itself was vested "exclusively in the Judge". Dissenting assessors could record the grounds of their dissent in the minutes of the trial.[3]

In civil matters, proceedings from the form of writs to the execution of judgements were finally regulated. Suits were ordinarily "heard and determined in a summary manner without pleadings", but the court could order the plaintiff or the defendant to file a

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1- Ordinance 5 of 31 Mar. 1876, Sections 109-124. Peremptory challenges automatically disqualified jurors from service on a particular jury; challenges for cause, however, had first to be accepted by the court before the juror was disqualified.
2- Ordinance 5 of 31 Mar. 1876, Sections 125-129.
3- Ibid., Sections 164-172.

written statement attesting to his claim or defence.[1] At the hearing itself, the party on whom the burden of proof lay had the right to state his case first. He then produced his evidence and examined his witnesses. After concluding his case, the other party stated his case, tendered evidence and examined his witnesses. Judgement was then given by the court. There was no provision for trial with jury, nor for trial with the aid of assessors.[2]

At any time before the judgement was given, an "order of reference" could be made by both parties to the suit agreeing to an outside arbitration. The arbitrators would be chosen by the parties themselves, and the decision of the arbitration, if consistent with accepted procedures, would be enforced in a like manner as a judgement of the court.[3] Finally, appeals could be made from the decisions of a Divisional Court, where the claim amounted to at least £50, and from a District Commissioner Court, where it was at least £5. Decisions reversed in a Divisional Court could be appealed to the Full Court, but confirmation of a lower court decision was final.[4]

Provisions for tendering evidence followed closely those in other English-styled courts. The court had the power to summon witnesses and penalise for non-compliance. Witnesses were compelled

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1- Ordinance 4 of 31 Mar. 1876, Schedule II, Order XXVI, Rule 1.
2- Ibid., Order XXXIV.
3- Ibid., Order LII.
4- Ibid., Order LIII.

to take the oath and to testify before the court or be adjudged in contempt. During the trial, the court could order the inspection of any moveable or immoveable property by the court itself, the jury, if one had been empanelled, or the parties and witnesses to the matter before the court. The one point, which in some way took into account the individual needs of the colony, provided for the summoning of chiefs and other qualified people, as the court directed, to act as referees, when a native law or custom had to be determined. Referees would be consulted only on specific questions of native law or custom - not in an assessor capacity - and affirmation of a law or custom by a referee had to be considered correct evidence by the court.[1]

Although most of the provisions for the Supreme Court reflected contemporary English legal practices, some were the result entirely of the peculiar circumstances of West Africa. Because the population was overwhelmingly a non-English speaking one, interpreting testimony was a long, protracted process, with the result that proceedings in the courts took almost double the time they took in courts in Britain. In order, therefore, to expedite court business, depositions taken at preliminary hearings could be admitted as evidence without being reported.[2]

1- Ordinance 4 of 31 Mar. 1876, Sections 81-92. This was the part later played by "assessors" in colonial courts; at this time, however, the distinction between "referees" and "assessors" still obtained. Questions of law are discussed more fully below, Chapter V.

2- Chalmers to Strahan, 30 Mar. 1876, in Strahan to Carnarvon, 31 Mar. 1876, CO 96/118; Ordinance 5 of 31 Mar. 1876, Sections 130-133.

More telling was the arrangement by which the court could interrogate the accused during any part of the trial. The accused could not be forced to take an oath or affirm, and no influence could be used to induce him to answer the court's questions. But although he could not be punished for refusing to answer, or for answering falsely, the court was allowed to draw its own inferences from his actions.[1] This procedure deviated from regular English legal practices insofar as an accused could be penalised in the court's view by a refusal to bear witness against himself. The need of such a procedure had been felt by some West African jurists in order to compensate for the difficulties of otherwise obtaining evidence. As this had been successfully introduced into Indian courts, a short trial period in West Africa raised no objections either on the coast or in London.[2]

The ordinances establishing the Gold Coast Supreme Court had necessarily to be sufficiently general to take account of the marked differences in the development of the various places on the Gold Coast and at Lagos. To this end, discretionary powers had been granted to the administration over certain judicial matters, most notably trial by jury. The structure of the court itself reflected the centralised design of the judiciaries in England and the colony Hong Kong, which was principally employed to facilitate administrat-

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1- Ibid., Sections 31-34, 134.

2- Mayne to the Under Secretary of State, 16 May 1874, CO 147/30; minute by Holland, 10 July 1874, on ibid.; minutes by Paunceforte, 15 Dec. 1874 and Herbert, 24 Dec. 1874, on Strahan to Carnarvon, 27 Sept, 1874, CO 96/112. This is discussed more fully in chapter IV.

ion. What had emerged from the continual proposals to reform the West African judicial systems was a highly sophisticated Supreme Court, which incorporated the most recent legal thinking in England and on the coast. On paper, at least, it was an impressive arrangement.

But the arrangement of 1876 proved to be too elaborate for the circumstances of the colony. It was an over ambitious scheme that did not take account of the colony's general resources, particularly an expected deficit in its finances for the first few years.[1] Even before the new court system became operative, it was clear that more legal officers would have to be provided, and the Colonial Office, finding itself hard pressed, was already thinking of economy while filling the necessary positions. Suggestions were made that it would be better to get "two cheap Scotch or Irish lawyers", rather than an English barrister who would have to be paid more, or even solicitors, whose "comparatively inferior position socially ... makes it possible for you to get a better article for your money". As a last resort, it was conceded that non-legal men would have to fill the colony's minor legal positions.[2]

For the Colonial Office, qualified men were "a very superfluous luxury", considering "the size and importance of the colony and the small number of white inhabitants".[3] Requests for legal officers

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1- The Colonial Office was aware of the colony's poor financial prospects even before the Supreme Court Ordinance was enacted; see, minute by Meade, 16 Aug. 1875, on Strahan to Carnarvon, 14 July 1875, CO 96/115.

2- Chalmers to Strahan, 10 July 1875, in ibid.; minute by Fairfield, 14 Aug. 1875, on ibid.

3- Minute by Carnarvon, 28 Feb. 1877, on Freeling to Carnarvon, 22 Jan. 1877, CO 96/120.

to replace judges and commissioners on leave were discouraged in London, which often meant that laymen had to be employed in important judicial capacities on the coast. Some positions were simply not filled; for example, a request in 1880 for a Crown Law Officer to advise the Administrator of Lagos[1] was refused. It had been the practice for the District Commissioner of Lagos to advise on legal matters, as it was considered unethical for the Administrator to consult the settlement's Puisne Judge, who might one day have had to render judgement on laws that he had helped to frame. Because of the Colonial Office's attitude towards qualified men, the District Commissioner of Lagos was a layman and could not be relied upon in this capacity. The Colonial Office, however, would only suggest that the Puisne Judge at Lagos act "confidentially" as legal adviser - as was the case at Sierra Leone - despite the ethical considerations.[2]

In addition to the stringency with which legal officers were allocated, the situation was further exacerbated in the 1880's when the terms of colonial service in the colony were altered from eighteen months on duty and six months leave to six months leave after

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1- Lagos remained under the immediate control of an Administrator residing in Lagos, who was responsible for most matters of local importance.

2- Griffith to Ussher, 25 Mar. 1880, CO to Ussher, 26 May 1880, CO 147/40. It had been the opinion of Sir Frederick Rogers that only when it was unavoidable should a colony's judge also act as legal adviser to the Governor; but he qualified this rule of thumb where the "smallest colonies" were concerned, see T.O. Elias, Ghana and Sierra Leone, London 1962, 280.

every year of duty on the coast.[1] While these liberal terms of service must have attracted more competent men to colonial service in West Africa, this now meant that for every two positions three men were necessary - another strain on the manpower resources of the colony.

As there were insufficient numbers to fill even the essential positions, much less the extras needed to replace officers on leave, it took a great deal of acrobatics in the colony to keep the machinery of justice from breaking down. The judicial establishment should have included at least three judges to preside over the western, central and eastern Divisional Courts; but until 1881, there were never more than two judges in the colony at any one time.[2] Moreover, even under the old terms of service, at least four judges should have been provided for the three available judgeships. During one six month period, the District Commissioner of Cape Coast, who had not yet qualified at the bar, was forced to act in three different capacities. With the Chief Justice the only judge in the colony, he was appointed acting Puisne Judge of both the eastern and western provinces, while retaining his District Commissionership. For almost six months he steamed back and forth between Lagos (the eastern province) and Cape Coast (the western province); and the Colonial Office in recognition of his arduous performance

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1- The terms of service remained the same for the Gambia and Sierra Leone; see, The Colonial Office List for 1885, 284.
2- Rowe to Kimberley, 30 Aug. 1881, no.240, CO 96/135.

awarded him precedent-setting half salaries for each of the three positions he held during this time.[1]

Even when the number of judges in the colony reached the minimum required, the provisions for local court venues worked against any efficient placement of the colony's legal officers. In less than a four month period in 1883, the judges and acting judges of the Supreme Court spent almost more time travelling between different points in the colony than on the bench itself, as the chart below shows.[2]

Date	Officer	Movement
11 January	Quayle-Jones, Acting Puisne Judge, Western Dist.	Proceeded to Cape Coast from Accra on appointment.
20 January	Macleod, Puisne Judge, Eastern District.	Proceeded to Accra from Lagos.
January	Bailey, Chief Justice.	Proceeded to England on leave.
January	Macleod.	Proceeded to England on leave.
26 February	Quayle-Jones	Proceeded to Elmina from Cape Coast to hold a Special Divisions Court.
March	Bridgman, Acting Chief Justice.	Proceeded to Axim from Accra for a Special Divisions Court.
4 March	Quayle-Jones	Proceeded to Cape Coast from Elmina to hold the monthly Assizes.

1- Rowe to Kimberley, 30 Aug. 1881, no. 239, CO 96/135.
2- Adapted from "Movements of Judicial Officers", in Row to Derby, 23 Apr. 1883, CO 96/150.

March	Bridgman	Proceeded to Accra from Axim on conclusion of Special Divisions Court.
March	Stubbins, Puisne Judge.	Proceeded to Lagos from Accra to hold the April Assizes.
11 April	Quayle-Jones	Proceeded to Accra from Cape Coast to take up the duties of Queen's Advocate.
21 April	Stubbins	Proceeded to Cape Coast from Lagos to take up appointment of Puisne Judge of the Western Dist.

Still further juggling of personnel was necessary. District Commissioners with no legal background or experience were elevated to judgeships in order to meet the court's schedules, and private individuals were often called upon to act as temporary government officials. Because of the constant pressure of court business, such appointments were seldom made with a view towards their value, or for that matter, their legality. At Lagos, it was necessary in the absence of both the Acting Puisne Judge and the District Commissioner in 1881, to appoint a barrister, temporarily residing there, to the District Commissionership, and when he was subsequently called upon to prosecute an urgent case, the Registrar, J.A. Payne, was appointed in his place.[1]

Unfortunately, District Commissionerships, unlike judgeships, were personal appointments and consequently non-transferable, and although District Commissioners were ex officio commissioners of the Supreme Court, they had no authority in judicial matters until

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1- Griffith to Row, 23 Nov. 1881, in Rowe to Kimberley, 6 Dec. 1881, CO 147/46.

this was granted under the hand of the Chief Justice and the Seal of Court.[1] Furthermore, they could only be appointed by the Governor in Council and not, as in both these cases, by the Administrator of Lagos.[2] Consequently, all judicial acts of both Nash Williams, the barrister, and Payne were invalid; all persons committed to prison by either had to be released, and all prosecutions whose preliminary hearing had been held before either had also to be laid aside.[3] Of course, this was only a technicality that could be put right by rehearing and retrying the cases involved; and provision was made for the future to allow the Governor alone to appoint District Commissioners.[4] But for the already hard pressed Lagos judiciary, the point was that some two months of work had now to be redone.

The lack of judicial personnel did not always have such relatively harmless results. With only the Queen's Advocate to prosecute offences such as slave-dealing, and he usually at Accra without ample time to make the journey to Lagos, it was not extraordinary for people charged with committing crimes to be kept waiting for some months in gaol before their cases were brought to trial.[5] As well, the policy of providing legal officials from the least expensive source was bound to lead to appointments of officers totally

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1- Ordinance 4 of 31 Mar. 1876, 2nd Schedule, Order X, Rule 1.
2- Ibid., Section 34.
3- Rowe to Kimberley, 7 Jan. 1882, and enclosures, CO 147/47.
4- Ordinance 7 of 30 May 1882, CO 97/2.
5- See, for example, Macleod to Griffith, 21 May 1880, in Griffith to Ussher, 22 May 1880, CO 147/41.

unsuited for their positions. One such appointee to a Puisne Judgeship, whose conduct on the bench was less than acceptable, and who was found to be negligent in the performance of his judicial duties, remained in the colony for less than three months, before departing without "any intimation of intention to this government". As this came only a few weeks after the death of the acting Chief Justice, the colony was left with only one legal officer until a replacement could be rushed to the coast. Even so, it was more than six months before Lagos had a Puisne Judge in residence again, a source of great concern for commercial interests there.[1]

Constant delays in the court's schedule were the result not only of the need for more legal officers. The appointment of laymen to legal positions, especially at Lagos, caused further delays and some embarrassment as well for the Gold Coast government. Large arrears of cases to be tried were continually found by judges reporting back to duty from leave in England. One acting Puisne Judge at Lagos, C.D. Turton, left forty-four civil and nineteen criminal cases to be disposed of by the incoming judge, when he was relieved of his temporary appointment in September, 1882. Some cases had even been remanded for trial in June of that year, but for one reason or another, Turton had not been able to hear them.[2]

1- Rowe to Derby, 29 June 1883, CO 96/150; Telegram from Griffith to Derby, 9 June 1883, ibid.; F. Hood to Derby, 22 Jan. 1884, and enclosures, Confidential Print 277, CO 879/21.
2- Rowe to Kimberley, 9 Jan. 1882, and enclosures, CO 147/47.

The appointment of constabulary officers, to District Commissionerships produced equally poor results. One such officer, appointed acting District Commissioner of Lagos, had been sent to Bow Street for a month's tuition in Police Court cases, before being sent out from England. Previous to this, he had never seen the inside of a court, nor had he had any legal education. Ill-informed as he was, the officer, H. Denis Cockeran, once placed a convicted seaman, who was to undergo his three month sentence in England, on board a steamer bound for Liverpool without issuing a warrant for the seaman's detention on board, nor placing him in anyone's custody. Cockeran did write a letter to the Stipendiary Magistrate of Liverpool explaining what had been done, but needless to say, when the ship arrived in England, the seaman quickly disappeared.[1]

The Colonial Office, of course, could not remain indifferent to these problems. The continual reports of crises from Governors and the more than occasional complaints from merchants on the coast eventually forced it to concede what had been demanded from the inception of the Supreme Court.[2] A new Governor, W.A.G. Young, was appointed for the colony in 1884 with instructions to reorganise the judicial establishment. His recommendations for more judges

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1- Cockeran to the Colonial Secretary, 9 Mar. 1885, and Bailey to Young, 7 Feb. 1885, in Young to Derby, 11 Feb. 1885, CO 96/164.

2- Complaints of merchants were of two kinds: that lack of judges caused court delays which cost them heavily, and that non-legal men in high judicial positions prejudiced the proper functioning of the courts. See, for example, Petition from Messrs. Calender, Sykes and Mather et. al., in Rowe to Kimberley, 13 Apr. 1882, CO 147/49.

were accepted by the Colonial Office, who, after six months with only one legal officer in the colony, were themselves ready to suggest additional appointments.[1] As for minor legal appointments, Young thought the employment of constabulary officers as District Commissioners objectionable in principle, and he suggested a rise in salary for those stationed at the larger places on the coast in order to obtain qualified men. Although Lagos was not specifically singled out by Young, some members of the Colonial Office thought it above all needed a legally trained District Commissioner; and after 1886, this position was always filled by barristers.[2]

But at the same time, it was recognised that only in the larger more populated areas could legal officers be qualified lawyers. This meant that abuses committed by inexperienced commissioners would have to be corrected in a more convenient manner than hitherto had been the case with appeals to Divisional Courts. In September, 1884, therefore, it was provided that for the future monthly lists of criminal cases determined by the colony's inferior courts would be forwarded to the Chief Justice with all the pertinent information and trial notes. This monthly list was to operate automatically as an appeal on behalf of everyone convicted in these courts, and the Chief Justice could amend or reverse judgements

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1- CO to Young, 14 May 1884, CO 96/157.
2- Young to Derby, 18 Sept. 1884, CO 96/159; minute by Anderson, 19 Dec. 1884, on ibid. In January 1886, E.H. Richards, a barrister, was appointed District Commissioner of Lagos. See, Blue Book for 1886, "Judiciary", CO 151/24.

given contrary to law, without hearing any further argument. He could also call for further particulars on the case, and in the meantime, liberate the prisoner on bail.[1]

The provision for summary review of District Commissioners' decisions was an effective and necessary measure, considering the officers often employed in this position. In all fairness to the Colonial Office, there was no alternative. If sufficient numbers of qualified judges and magistrates were provided, establishment expenses would have been too great to admit of expenditure on needed public works in any but a token way. For Britain to establish effective direct rule, the number and quality of colonial officials would have had to rise substantially, and this the Colonial Office felt unwilling to do. Administration could only be improved at the expense of other considerations; consequently, establishment expenses had to be minimised in order to maintain the balance between them and public expenditure. The Colonial Office was less at fault for not providing an adequate number of qualified legal officers than for erecting a judicial system which needed from the start a large proliferation in its establishment. Their mistake was one of short-sightedness rather than one of negligence.

The delays in court schedules, while largely the result of too few legal officers with judicial experience, were also the product

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1- Ordinance 7 of 2 Sept. 1884, CO 97/3.

of a court procedure, which remained both too complicated and elaborate. Criminal cases on the whole were relatively easy to dispose of; but civil cases, with practically every point being contested by the parties to the suit, brought the court's business to a standstill. In cases involving points of African law or custom, the difficulties of reaching quick and just decisions were further complicated by the impossibility of ascertaining the correct law on the matter, when in most instances the chiefs, themselves, did not agree.[1]

To a great extent, too, the amount of business handled by the courts depended on the personality of the judges themselves. One judge might deal with cases in a deliberate and careful way, taking twice or three times the amount of time required by another whose style was "more rough and ready". Although the Colonial Office found the latter method "best suited to a place like the Gold Coast", no complaint could be made with the more careful approach.[2]

Only palliatives could be offered; the enlargement of District Commissioners' jurisdiction was one. In 1880, the District Commissioners of Cape Coast and Keta were further empowered to hear criminal actions that could be penalised with a fine of £50 and imprisonment for up to nine months (six months in the latter's case), and civil cases where the amount claimed did not exceed £100.[3]

1- Jackson to Meade, 13 May 1880, CO 96/133.
2- Minute by Hemming, 15 May 1880, on ibid.
3- Ussher to Hicks Beach, 13 Apr. 1880, CO 96/130.

But such measures only provided temporary relief; the real problem remained one of manpower.

In general, therefore, the elaborate structure erected in 1876 proved impracticable for the conditions of the Gold Coast Colony at this time. In neither personnel nor financial resources was the colony able to afford the luxury of a Supreme Court based on an English example. Without an adequate supply of qualified legal officers, the due and proper process of law remained an empty phrase, to be achieved at some future time. For Lagos the change had even more dire consequences. Indeed, the decade or more in which it formed part of the Gold Coast colony saw virtually a continuation of earlier shortcomings. Though dramatic changes had been made in the judicial structure, the resulting system left Lagos, more times than not, in a worse position than before. The specific needs of the island could not be met while it remained part of a larger colony comprising such diverse places as Cape Coast and Accra, Axim and Winneba. The interests of Lagos were sacrificed to the needs of the more important settlements on the Gold Coast, and the result, as could have been anticipated, was a decline in the effectiveness of administration, in general, and of legal institutions specifically.

The amalgamation of the Lagos and Gold Coast settlements lasted for just over a decade. Intended at the outset to affect administrative efficiency, the combined colony proved to be awkward as an administrative unit. In fact, no real amalgamation had taken place;

it was only in 1883 that the position of Administrator of Lagos was abolished, and only two years after that that some unification was achieved in the administrations of the two former settlements.[1] Fiscal integration had not even been attempted. Moreover, the inconveniences of maintaining the colony as one far outweighed the expected benefits: there was little common interest between the two settlements; the distance separating them from each other on the one hand, and the need for prompt political action at Lagos on the other, proved an impossible combination, and forced the Governor to spend far too much time on Lagos affairs. It was clear, therefore, that Lagos had either to be placed on the same footing as any other district in the colony, or to be made into a separate government once again.[2] Once Porto Novo had been re-occupied by the French there seemed no reason to continue the arrangement, which to some at the Colonial Office had provided the last hopes of expansion along the intervening coastline.[3] With these hopes shattered, the arguments against retaining the two settlements as one colony were seen in a new light, and the Gold Coast and Lagos were separated.

By Letters Patent of 13 January 1886, Lagos was erected into a separate colony with a Governor, Alfred Moloney, administering the government. Executive and legislative councils were re-consti-

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1- Letters Patent of 22 Jan. 1883; CO to Young, 6 Feb. 1885, CO 96/159.
2- Young to Derby, 14 Mar. 1885, CO 96/164.
3- See, minutes by Hemming, Derby and Meade, on ibid.

tuted, and the laws in force while Lagos was part of the Gold Coast colony were extended intact to the new colony.[1] The court system as established by the Supreme Court Ordinance of 1876 remained for the most part unaltered, though some adjustments were made to fit the changed circumstances. Most notable of these were the provisions for a Court of Appeal from the decisions of the Lagos Supreme Court. With Lagos now a separate colony, a Full Court could not be constituted by Lagos personnel alone, since for purposes of appeal at least two judges were required. Rather than have appeals lie direct to the Privy Council in London, it was at first thought more convenient to have appeals from the Lagos Supreme Court lie to the Full Court of the Gold Coast.[2]

This arrangement, however, was not well received in Lagos; it implied subordination, and officials there, having affected the separation of Lagos from the Gold Coast, were not prepared to enter the new relationship on less than equal terms.[3] The judge of the Lagos Supreme Court, Smalman Smith, was particularly irritated by what he considered to be a slight to his court; but he also objected to the proposal on more solid grounds. In the first place - he argued - it would be inconvenient for appellants to travel to the Gold Coast to have their appeals heard; and secondly, appeals would suffer in the absence of the Lagos judge, who otherwise would

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1- Ordinance 1 of 13 Feb. 1886, CO 148/2.
2- This had been decided in October 1885. See, CO to Moloney, 16 Apr. 1886, CO 147/54.
3- See, for example, Moloney to Granville, 19 Feb. 1886, CO 147/54.

have been able to explain fully the details of the case and assist in the final judgement. To remedy this, Smith suggested a joint Court of Appeal constituted by the judges of both Supreme Courts.[1] In part to assuage the feelings of officials in Lagos, and because Smith's arguments were not without merit, the Colonial Office instructed the Governor of the Gold Coast to make some provision for appointing the Lagos judge to the Full Court for cases coming from Lagos.[2]

But again objections were raised, this time by the Law Officers of the Crown, who thought the arrangement a doubtful procedure. Instead, they suggested that a Court of Appeal be established in each colony, and the judges of each colony made judges of first instance and appeal in both courts.[3] And this was the final shape taken by the Lagos Court of Appeal. Provision was later made for appeals to the Privy Council from the court's decisions in cases where the amount in question involved £500 or more.[4]

One further change was made in the structure of the Lagos Supreme Court. The colony's Vice-Admiralty Court, originally commissioned in 1862, had remained operative throughout the years in which Lagos was included in the West African settlements and in the first

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1- Smalman Smith to Moloney, 3 June 1886, in Moloney to Granville, 4 June 1886, CO 147/55.
2- CO to Griffith, 13 Sept. 1886, CO 147/55.
3- Law Officers to Holland, 26 Jan. 1887, CO 147/62.
4- Ordinance 1 of 17 Feb. 1888, CO 148/2; Order-in-Council of 5 July 1889, CO 150/3, 337-38. By way of contrast, appeals from the Gambia had first to come before the Supreme Court of Sierra Leone before going to the Privy Council for a final decision. See, minutes by Antrobus, 20 June 1889 and Bramston, 21 June 1889, on Council Office to Bramston, 15 June 1889, CO 147/73.

six years it was part of the Gold Coast colony. In 1880 the Vice-Admiralty Courts of the two former settlements were united, and therefore on separation, the Lagos court and its jurisdiction had to be reconstituted.[1] The new court, however, lasted less than three years, for in 1890, Vice-Admiralty Courts were generally abolished as separate entities under the Admiralty. It had become inexpedient to continue their operation, which, since the end of the trans-Atlantic slave-trade, had involved mainly the trial of trivial sea offences. Henceforth the jurisdiction of the Vice-Admiralty Court was exercised by the Lagos Supreme Court.[2]

Otherwise, the structure of the Supreme Court remained unaltered. Some improvements, though, were made in administrative procedures. In order to secure the fees charged by the court from defalcation, a system of payment by stamps was introduced in 1886. As well, judicial forms, hitherto lacking uniformity, were classified and standardised. A new and enlarged table of court fees was framed and passed into law; and general regulations for the internal guidance of the judicial department were issued in consolidated form.[3] An analytical index of practices and procedures in the colony's courts was compiled to guard against procedural anomalies. The inclusion in this index of all ordinances touching upon procedure

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1- Lagos Gazette for February 1888, CO 150/2, 44-45.
2- Minutes of the legislative council, 15 Jan. 1891, CO 149/3.
3- Moloney to Granville, 3 July 1886, CO 147/56; Smalman Smith to Knutsford, 3 Sept. 1888, CO 147/68.

passed since 1876 greatly reduced the risk of confusion on such points.[1] Physical improvements were also made: the court buildings at Tinubu Square were rearranged, and new court offices and a jury room were added to the site. Later, at the turn of the century, the courthouse itself was pulled down after twenty-five years of service, because rot had set in rendering the structure unsafe for further use. Construction of a new courthouse was commenced, and in 1904 the building was completed and officially opened.[2]

In the last decade of the colony's independent existence (Lagos was amalgamated with Southern Nigeria in 1906), further changes were made. The powers of the Chief Justice were enlarged in 1900 to enable him to try cases summarily, when the offence committed could be punished by imprisonment of not more than six months.[3] Similarly, the expansion of the geographical limits of the colony and Protectorate[4] required a like expansion of District Commissioners' powers in order to avoid inconvenience to suitors and overwork

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1- Moloney to Holland, 13 Feb. 1888, and enclosures, CO 147/63.
2- Smalman Smith to Knutsford, 3 Sept. 1888, CO 147/68; The Lagos Standard, 27 July 1904, quoting a speech by C.H.H. Moseley of 21 Jan. 1904.
3- It had been decided in 1886 to call the judge of the Lagos Supreme Court the "sole judge". After the debate over the new Court of Appeal, however, the Colonial Office thought it best not to slight the Lagos judge over such an unimportant matter. Accordingly, the title of Chief Justice was bestowed upon him in 1889 by ordinance 9 of 17 August, CO 148/2; ordinance 20 of 13 Nov. 1900, Section 2, CO 148/2.
4- The expansion of the Supreme Court's jurisdiction is discussed in Chapter VI.

in the high court. As on the Gold Coast previously, when particular District Commissioners had shown considerable ability, their jurisdiction in civil and criminal matters was enlarged; or where it was not in the colony's interest to create such a precedent by granting certain jurisdiction, District Commissioners were allowed to exercise it in a temporary capacity as surrogate for the Divisional Court. This was the usual practice with land cases in the districts when it would have been practically impossible for the Divisional Court to handle the matter on the spot. For this purpose District Commissioners were temporarily empowered to enquire into the case and on the basis of this report - made with the assistance of native assessors in cases involving land - the court would make its judgement.[1]

The need to accommodate suitors in the districts brought about other changes. The time consumed travelling to Lagos and back discouraged important litigation from appearing before the Supreme Court. The administration realised the difficulties entailed by suitors in bringing actions before the Supreme Court, and partially to ameliorate this, circuits were introduced in 1902. In fact, it was the nature of land cases appearing before the court at this time that initially brought about this change. Because it had become necessary for the judge of the court to examine the land in question personally, and therefore to make the journey from Lagos,

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1- Speed to the Governor, 20 May 1902, in Moseley to Chamberlain, 30 July 1902, CO 147/161.

he began to try cases while there that otherwise would have been heard in Lagos. It was from this informal beginning that a regular system of circuits grew up, saving both time and money for suitors, while at the same time facilitating business in the court.[1]

The actual day-to-day functioning of the courts during this later period was chiefly influenced by the personnel who filled the colony's legal appointments; the terms under which they were employed and their qualifications. The employment of a Queen's Advocate, for one, had from the early years of the settlement been a constant source of contention. The point of issue before 1886 was whether Lagos could afford the additional expense; but after the separation of Lagos from the Gold Coast colony, this should no longer have been of moment. The colony's annual revenue had increased by more than twenty-five per cent.[2] But although it was agreed that with Lagos now an independent colony, the appointment should be made, it was also decided for reasons of economy that the Queen's Advocate would be allowed a private practice in addition to his governmental duties. This arrangement was not unusual and was less expensive than a full time appointment; and as he would only be able to represent cases approved of by the Governor, the question of his private practice interfering with government business would not - it was argued - be raised.[3] In fact, this safeguard proved

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1- The Lagos Weekly Record, 27 Dec. 1902.
2- The average yearly revenue of Lagos for the years 1871-74 was £44,600, whilst for the years 1883-86, it rose to £56,300. See, Table of Revenue and Expenditure, in Newbury, The Western Slave Coast, 212.
3- Moloney to Granville, 19 Jan. 1886, CO 147/54.

ineffective, and the colony's first Queen's Advocate, Oliver Smith, had his usefulness marred by private considerations. While he remained at Lagos, the terms of employment were not changed; but because the arrangement had not worked out as expected, it was decided that his replacement would not be allowed the same privilege but engaged full time in government service.[1]

It was often the case that appointments, like this one, of a semi-permanent or circumscribed nature, were made in the knowledge that they would shortly be converted into regular, annual appointments. The Imperial Treasury still exerted considerable influence over matters concerning personnel and salaries, which had to be taken into account whenever expansion of the establishment was contemplated. It was perhaps too much to expect the Treasury to sanction new appointments at a salary of £600 a year, which skirted the fringes of what they considered to be essential. But to have such an appointee begin at a salary of £350, although with the right to a private practice, was an economy which it was thought the Treasury in London could well appreciate. To be sure, the Lagos government and the Colonial Office both knew that previous appointments of a Queen's Advocate with private practice at the Gold Coast had proved unworkable;[2] and as it was the Governor himself who had to approve any private work taken on by the Lagos Queen's

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1- Moloney to Holland, Telegram, 15 Sept. 1887, CO 147/60; minute by Hemming, 7 Oct. 1887, on ibid.; George Stallard replaced Oliver Smith as Queen's Advocate in 1892. See, Blue Book for 1892, CO 151/30.

2- See, Rowe to Kimberley, 10 Jan. 1882, CO 96/137; and CO minutes, on ibid.

Advocate, interference with his governmental duties could easily have been avoided. There is, therefore, every reason to doubt the intentions of the arrangement in the first place. It would appear that the conditions of service made for the Queen's Advocate of Lagos in 1886 were intended primarily for the consumption of the Imperial Treasury in London.

The employment of District Commissioners was also accompanied by controversy. The last years of the colony's independent existence saw a continual debate over the qualifications that were thought necessary for these officers. There was no disagreement so far as the Lagos District Commissioner - called the Police Magistrate after 1896 - was concerned: legal qualifications were required. But even this position suffered from non-legal appointees, because of constant vacancies in higher positions that had to be filled by him temporarily. With the Chief Justice or the Queen's Advocate away or indisposed, he had to perform in their place, and his duties were performed by whomever the colony could get to do the job, whether qualified or not.[1] But it was at least recognised that at Lagos qualified legal men for positions such as Police Magistrate were desirable, even if this could not always be the case in practice.

With commissioners in the districts it was never so simple. Since their primary function had always been judicial, it was ex-

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1- In 1898, for example, there were six different acting Police Magistrates. See, The Lagos Standard, 1 Feb. 1899.

pected that they have at least a cursory knowledge of English law; but since their duties, unlike those of the Lagos District Commissioner, included police, customs and political matters as well, it was not a steadfast rule that they had to be qualified. The Colonial Office on the whole supported this view. As one official noted: "it would probably be better to have barristers if possible, but good men of the kind cannot always be found to go to the West Coast".[1] For the most part, therefore, legal qualifications for District Commissioners were a desideratum to all concerned, but because of circumstances less had to be accepted.

This view of the importance of legal qualifications, reflecting as it did the primary functions of early District Commissioners, was radically altered at the turn of the century. A new Governor, William Macgregor, held different ideas about the African peoples, with whom Britain was coming into contact, and the way in which they should be governed. This was partially revealed in his dissatisfaction with the performance of commissioners who came to Lagos with little or no experience in any form of administration, and who as "townsmen" were not able to settle down in the rural districts. Rather than young lawyers fresh from Inns of Court or Universities, Macgregor would have preferred his commissioners to be men with experience in tropical countries and of Africans. Conditions in West

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1- Minute by Hemming, 6 Feb. 1893, on Carter to Ripon, 2 Jan, 1893, CO 147/89.

Africa were such, he commented, that,

> common sense and a sense of justice are far better qualifications for a Stipendiary Magistrate in this Colony than a University diploma or a degree in law. Their duties should be far more executive and administrative than legal. The attempt to apply elaborate and complex English legal procedure in the outdistricts here cannot possibly succeed. 1

Indeed, by the end of the nineteenth century, conditions under which commissioners performed their duties had undergone a considerable transformation. The attitude of Lagos towards her neighbours under the Governorship of Gilbert Carter had assumed an air of belligerency which led directly to the Ijebu expedition of 1892.[2] Whereas before this change in policy District Commissioners concentrated chiefly on legal and law enforcement matters, leaving to traditional rulers their ordinary administrative duties, after 1892 commissioners played an increasingly political role in their districts. The mood of imperialism had switched from one of indifference towards solely African matters to one of concern: from one of detachment with little regard for the colony's districts to one of recognition that Lagos was the nucleus of an expanding colony. Accordingly, the emphasis of rule in the districts, in Badagry as well as the newly ceded portions of Ijebu, became political. District Commissioners could no longer be satisfied with administering English law for the convenience of European and African merchants.

1- Macgregor to Chamberlain, 19 Oct. 1899, CO 147/145.
2- Forthe political expansion of the colony see, A.A.B. Aderibigbe, Expansion of the Lagos Protectorate, 1863-1900, London, Ph.D., 1959.

Under the new conditions, they were required to be political agents as well as commissioners of the Supreme Court.

Although Macgregor could prefer experience to legal training in his District Commissioners, it was as difficult to find men of this type of a high caliber, and there was, therefore little implementation of his design, despite general acceptance of it.[1] But the new context in which District Commissioners had to work, and Macgregor's recognition of this, did influence future recruitment. This is not to say that legal qualifications were regarded in a negative light for service in the colony; Governor Egerton still regarded it as an advantage in 1905 and would choose the barrister when two like candidates presented themselves for a position.[2] But it was no longer thought essential for commissioners to be legally trained, and an experienced officer would be preferred before a barrister fresh from England.

Egerton's experience, like Macgregor's had shown him that important judicial work could be done well by experienced officers; but to ensure that unqualified officers were up to standard in legal matters, he suggested they be called upon to sit an examination in the various aspects of their judicial duties within two years of their appointment.[3] This apart, no other considerations were paid to the legal functions of District Commissioners, and the road

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1- See, CO minutes, on Macgregor to Chamberlain, 19 Oct. 1899, CO 147/145.
2- Egerton to Lyttleton, 28 May 1905, CO 147/175.
3- Ibid.

was paved for future "residents" to approach problems of justice from a less technical point of view.

At times, the qualifications of District Commissioners were beside the point. With leave regulations as they were, three men should have been provided for every two positions; but even in these latter years this was never the case. As a result, qualified District Commissioners often found themselves in Lagos for almost half their tour of duty, replacing the Police Magistrate or Queen's Advocate, who were themselves either acting temporarily in other capacities or on leave. Who replaced these commissioners is therefore of greater concern for us and more indicative of the administration of justice; for it was these replacements and not the original appointees who presided in District Commissioner Courts most of the time. As has been shown, while Lagos was part of the Gold Coast colony, temporary replacements for commissioners were usually taken from the constabulary. This choice left much to be desired in most cases, but for want of an alternative it had to be resorted to. After 1892, however, even constabulary officers were hard to find. The increased military presence in the interior subsequent to the occupation of Ijebu Ode, though accompanied by an increase in the numbers of Europeans, spread even thinner the constabulary officers available for temporary non-military assignments, and the colonial authorities were forced on an even greater scale to employ virtually any officer from whatever department could afford him.

As the most conveniently situated personnel in the districts were medical officers, it was not unusual to find them acting as District Commissioners when the colony was especially pressed for manpower. In fact, at one time in 1902, three of the colony's District Commissionerships were being filled by medical officers.[1] As might very well be expected, the results of their activities were often ludicrous. During a six month period in which the Assistant Colonial Surgeon acted in this capacity, ten of his convictions had subsequently to be reversed or amended by the Chief Justice.[2] But there was little the authorities could do to correct this situation in the absence of the required number of officers, and Governors had to contend with such anomalies as best they could, relying on their senior legal staff to undo the mistakes of their temporary juniors.

There were, of course, safeguards that did help to reduce the number of severe or illegal sentences. The Summary Review Ordinance of 1884 had made provision for all summarily adjudged cases to be brought automatically to the attention of the Chief Justice, who could then quash or amend sentences.[3] As well, there were the ordinary executive channels through which sentences could be remitted and pardons and reprieves granted. All capital punishments had to be reviewed by the executive council, which had the trial

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1- Moseley to Chamberlain, 2 Oct. 1902, CO 147/162.
2- Macgregor to Chamberlain, 9 Aug. 1899, CO 147/143; CO minutes on ibid.
3- Ordinance 7 of 2 Sept. 1884, CO 97/3; see, for example, Returns of Reversals, in Evans to Stanhope, 28 Jan.1887, CO 147/58, in Moloney to Knutsford, 9 July 1888, CO 147/64, and in Rayner to Chamberlain, 27 Jan. 1898, CO 147/129.

judge's notes and the minutes of evidence before it. There is no evidence of a pardon or reprieve being granted in a capital case, but this was probably because a jury recommendation of mercy would have been taken into account before the sentence was initially passed.

In other matters, however, the council commonly exercised its prerogative, remitting sentences thought to be too severe and countenancing petitions for the release of prisoners who had already served large portions of their terms of imprisonment.[1] On one occasion, Governor Moloney prompted the commutation of three nine-year sentences to six years - the time already served - on the grounds that the nine year terms of imprisonment had been made with an eye towards their effect in quelling incipient disorder. Since the danger had now passed, and a lighter sentence might have satisfied justice if not for the immediacy of the situation, remittance of the remaining three years was granted.[2]

Other factors involving legal personnel were also pertinent to the functioning of the courts. Of great importance, though most difficult to assess, were the personalities of the men who sat on the bench. Chief Justice Smalman Smith, for example, was the sort of man who finds it hard to act in less than a decisive manner, which in the conditions that obtained at Lagos had to result in

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1- See, for example, minutes of the executive council, 7 Feb. 1901, CO 149/7.

2- Moloney to Knutsford, 12 Sept. 1890, CO 147/76; Smalman Smith to Moloney, 23 June 1890, in ibid.

indiscretions. Smith was, in fact, accused of acting injudiciously by a large group of Lagosians, supporters of D.C. Taiwo, an African merchant.[1] The case which provoked the group's ire was not untypical of the difficult cases that came before judges at Lagos, which had to be decided, so it seemed,almost intuitively. In this particular case, which Smith eventually decided against Taiwo, the evidence heard in court consisted entirely of oral reports by supporters of either party to the suit. Since the testimony conflicted at every vital point, it was obvious that one side was not telling the truth - but which one could not be factually determined. As the judge, Smith had to reach a decision, and he eventually found for the plaintiff against Taiwo. In the course of reading his judgement and giving the reasons for it, however, Smith severely censured Taiwo for fabrication of his defence.[2] It was this accusation, unsupported by fact, that led to the complaints against him.

To be sure, difficult decisions had to be made in the absence of more satisfactory evidence; but this was not peculiar to Lagos or even West Africa. What was peculiar to the relationship that prevailed in the colonial situation between those on the bench and those in the dock was that a self-righteous posture could be assumed on the basis of such decisions. Smith's successor, T.C. Rayner, displayed similar weaknesses. Quick to feel offence when his judgement

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1- Petition, in Evans to Granville, 6 Aug. 1886, CO 147/56.
2- Evans to Granville, 6 Aug. 1886, and enclosures, CO 147/56; minute by Bramston, 20 Sept. 1886, on ibid.

was doubted, Rayner easily contracted animosities against individuals; he quarrelled with almost every officer who came into contact with him and did not possess the respect of the Lagos community, African or European, in his official capacity. Governor Macgregor thought he was qualified to be a puisne judge, but not adequate enough for a higher position.[1]

It was men like Smith and Rayner who were called upon to render judgements in cases that defied even the most patient scrutiny; and these, it must be remembered, held the highest legal position in Lagos. That more complaints did not reach London seems explicable only by the prevailing illiteracy of the colony's inhabitants. With the numerous minor judicial officials, the quality of patience and the consideration involved in reaching decisions must have been even less. Indeed, the pettiness exhibited by some at times almost reached antic proportions. Their insistence on due form agonised Africans who understandably were more interested in having justice done quickly and cheaply than being treated to the spectacle of English courts in action. An incident that occurred in 1905 will illustrate this. Because spectators in his court would not stand promptly on his coming to the bench, the Lagos Police Magistrate had the public benches removed from the court. Thereafter, the public stood not only upon his arrival but throughout the court's pro-

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1- Macgregor to Chamberlain, 24 Mar. 1902, CO 147/160.

ceedings.[1]

One further point concerning the legal system in general must here be considered. In an earlier chapter it was shown that although interference with the judicial prerogative by the executive branch of the government was officially discouraged, there remained sufficient ambiguity as regards the independence of the judiciary to allow for later misinterpretation.[2] As a result, while it was true that the judiciary retained a large degree of independence from executive control or influence, it was also forced to accede on occasion to the demands of the executive. Transplanted, as it were, from its English roots, the Lagos judiciary retained a great deal of its original character. Judges and commissioners alike endeavoured to simulate the postures of their counterparts at home, judging cases on their own merits without regard to the personalities involved or the issues at stake. For the most part, claimants and defendants, accuser and accused, were equal before the court, and those prejudices that may be inferred at times from the court's behaviour were rather of a personal than an imposed kind.

But the courts did have to function in circumstances far removed from those in England. The British ruled an alien country, controlling upwards of one hundred thousand people with a mere handful of colonial officials and an inadequate military and police force. This by itself necessarily precluded the same considerations

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1- The Lagos Weekly Record, 11 Mar. 1905.
2- See above, chapter II. pp. 124-26.

that were possible in England. A passing reference has already been made to a case in which three men were sentenced to terms of imprisonment of nine years, because of the internal situation, when a lesser sentence would have been more appropriate to the crime.[1] The colony's judges and commissioners could not have been unaware of their ambiguous position. As judges they were supposed to administer the law impartially, to guard the rights of individuals against arbitrary decisions. Yet as colonial officials sent to rule an alien people, they could not be indifferent to the consequences of applying strict interpretations of the law. Thus, throughout the years under discussion, there are instances of quasi-legal measures being taken by the executive - some with the knowledge that they were illegal - to be later regularised by retrospective legislation.

In such matters the judiciary had only a limited choice; maintenance of order in the colony was more important than application of the "niceties" of English legal principles. Moreover, to take a stand against such practices would have required an act of moral courage in some instances, of which the colony's legal officers could not be expected. In the first place, the cardinal prerequisite for an independent judiciary, namely security of tenure, did not apply to Lagos judges throughout the colony's independent ex-

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1- See above, p. 174.

istence.[1] And secondly, tours of duty in places like Lagos usually served as stepping-stones to more prestigious assignments in the West Indies, Hong Kong or Australia. Judicial officers depended on the favourable recommendations of Governors both for promotion or a transfer to a colony with a better climate; and junior members of the judiciary, who had proved themselves independently-minded, could not be certain that their services would be employed after completion of their tours in West Africa.

Trials of strength between Governors and legal officers did, of course, occur. The suspension of Chief Magistrate Benjamin Way in 1872 exemplified the ease with which judges could fall out of favour with the executive; though, at the time, Administrator Glover contended that it was merely a question of Way being unfit for his position. As chief executive of the settlement, Glover doubtless felt responsible for whatever occurred at Lagos, and this had inevitably to lead to conflict with the head of the judiciary. It was for much the same reason that later that year Glover complained about the performance of the settlement's Police Magistrate, again not so much because of his shortcomings as the ill-defined limits of their respective responsibilities.[2]

While Lagos was part of the Gold Coast colony, there was little

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1- Until 1914, judicial officers served under the same conditions as other colonial officers, that is, "during her Majesty's pleasure", and not as judges in England, "during good behaviour". See, T.O. Elias, British Colonial Law, London, 1962, Chapter IV.

2- See above, Chapter II.

opportunity for similar conflicts: the judge of the Lagos Divisional Court had not the same responsibilities for the judicial department as his predecessors; and the Administrator at Lagos was in no position to contest the judicial prerogative. But this changed once Lagos became a separate colony in 1886. The new Governor, Alfred Moloney, bumptious and impatient, was bound from the start to provoke the colony's independently-minded Chief Justice, Smalman Smith. Like Glover, Moloney had served in the Ashanti campaign, and as a professional soldier, he demanded of his colonial officials the same obedience and subordination that were demanded of junior army officers. Lacking the tactfulness to inspire willing compliance, or the educated manner to command immediate respect, he offended people by his aggressiveness while remaining thin-skinned to any adverse criticism.

For his part, Smalman Smith had much the same character as Moloney, though shorn of his rough edges. As quick to feel a slight to his pride, Smith had annoyed the Colonial Office with specious arguments against the proposed Court of Appeal to the point where it was more troublesome for them to maintain their original plans than to concede the point to him. Neither man was highly regarded by members of the Colonial Office who thought both too self-important for their humble positions, and too prone towards truculent and uncompromising behaviour. Their opinion of Moloney was further influenced by the almost comical expression of his prose and the diffi-

culty with which his dispatches were understood.[1] As one clerk minuted: "I am not sure whether the natives or Capt. Moloney bear away the palm for extraordinary English. It is a close race."[2]

A collision between two such similar personalities was not long in coming. The issue which provoked the clash was of minor import and reflected primarily the jealousy with which each man guarded his own prerogatives. But it also illustrated the opportunity for conflict between Governor and Chief Justice presented by the peculiar circumstances of West African colonial rule. The occasion in question involved an incorrect ruling by the acting District Commissioner of Lagos, R.S. Johnstone, rendered in a case brought by the government against various offenders against the Stamp Ordinance. Upon hearing of the decision, Moloney set afoot inquiries into the conduct of the case and demanded from Johnstone an explanation. Smalman Smith, of course, took great exception to the Governor's behaviour, reminding him

> that a judicial officer cannot properly be called upon for explanation or justification of his acts in a judicial enquiry, except in the manner and by the means prescribed by law, that is to say, by appeal to the proper tribunal.

Moreover, he continued, in a case between the Crown and a subject "judicial officers should be placed above even the suspicion of external control or influence in the discharge of their duties.[3]

1- A good example of Moloney's style of writing can be found in his dispatch to Granville of 27 Feb. 1886, CO 147/54.
2- Minute by Hemming, 27 Mar. 1886, on ibid.
3- Smalman Smith to Moloney, 20 Dec. 1890, in Denton to Knutsford, 3 Feb. 1891, CO 147/79.

Moloney quite naturally disagreed with this position. He contended that a Governor was always within his rights to question the fitness of a magistrate to hold his position, especially so when a case had admittedly been badly conducted.[1] In this he was not entirely unjustified, since the system which he served possessed inherent ambiguities that forced him to interfere in any matter concerning the colony. With equal justification, Smith objected "from the proposition that any interference in the administration of justice is justifiable or permissable upon any such pretext."[2] To the legal mind, Moloney's argument was not even pertinent to the real issue at stake, which was the continued independence of the judiciary from executive control, no more no less.

Each man, it can be seen, thought his duty called for opposition to the other's contention: Moloney claimed the right to interfere where the colony's interests were threatened, whereas Smith saw this as an infringement of the judiciary's independence. At the root of the problem lay the mutual antipathy of the colonial situation in West Africa and British concepts of justice and judicial independence. In West African conditions, the administration of justice was far too important a function of governmental authority to be left to the discretion of judges; and although English jurisprudence had a long history of and prided itself on its impartiality and resistance to outside control, no such latitude could be

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1- Minute by Moloney, on ibid.
2- Smalman Smith to Denton, 17 Jan. 1891, in ibid.

allowed in Lagos.

While the Colonial Office continued to pay lip-service to the idea of judicial independence, Moloney's demand for a report from the acting District Commissioner was supported.[1] At the same time, no broad statement of policy was made. The Colonial Office were in the very difficult position of having to support their Governor and the measures he adopted for the governing of the colony, while maintaining a judicial system based on ideas that could be used to undermine the very rule they had established and sought to perpetuate. Although half-heartedly, there was no alternative but to pronounce in favour of Moloney.

No sudden reversal of official policy was forthcoming, and to some extent the fiction of an independent judiciary remained current; but by the time Lagos and Southern Nigeria were united in 1906, the fundamental difficulty had largely been obviated. Nothing had been done to impair the integrity of the Supreme Court directly, but in 1905 the colony's District Commissioners were transferred from the judicial department to the department of the interior, where they were the direct responsibility of the Colonial Secretary.[2] In effect, this pruned the judicial tree to the trunk itself. District Commissioners were henceforth political officers first and

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1- CO to the Officer Administering the Government, 23 Apr. 1891, CO 147/79.

2- Blue Book for 1905, CO 151/43; The Lagos Weekly Record, 13 May 1905. By way of comparison, in 1904 the Chief Justice of the Supreme Court of Northern Nigeria was relieved of his charge after coming into conflict with the High Commissioner, F.D. Lugard. See, M. Perham, Lugard, the Years of Authority, 1898-1945, London, 1960, 162-63.

commissioners of the Supreme Court second, and whatever independence commissioners might have exhibited in their judicial duties before then, very little indeed was possible afterwards.[1]

In general, therefore, the Supreme Court system proved too ambitious for the circumstances of the Lagos colony. Conceived as a general answer to the judicial problems of the settlements on the Gold Coast, the system failed to meet the specific needs of Lagos. During the period of amalgamation, the settlement's interests were continually sacrificed to those of the more important settlements to the west. Judicial personnel from Lagos had often to journey to the Gold Coast to act for their ailing or absent colleagues, leaving Lagos temporarily without the services of a qualified legal officer; and in the last five years of the arrangement, no Court of Appeal was convened at Lagos, chiefly because of the inconvenience to local suitors of waiting for the arrival of a judge from the Gold Coast.[2]

But even after 1886, the basic weaknesses of the system remained. Primarily, these shortcomings were the result of the demands of the system itself, which could not function efficiently without an adequate supply of trained legal officers. And these

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1- When discussing the faults of the Supreme Court system, Lugard wrote that it "creates needless friction with the executive, whose carefully adjudicated decisions ... may be called in question, with a consequent weakening of their influence and authority in the maintenance of law and order". See, F.D. Lugard, The Dual Mandate in British Tropical Africa, London 1922, 541.

2- G.E. Moss and C.A. Williams to Smith, 15 Feb. 1888, in Moloney to Holland, 20 Feb. 1888, CO 147/63.

demands were in diametric opposition to the wishes of those at the Colonial Office who sought to minimise colonial expenditure, in general, and establishment expenses, in particular. Only a limited amount of revenue was available for all the needs of the colony: public roads and buildings had to be built and kept in a moderately good state of repair, and improvements, such as, the construction of a railroad to the interior, begun in 1896, had to be made. But without the necessary judicial personnel, the elaborate mechanism of the Supreme Court was to no avail; and this, I have suggested, was more often the situation than not.

Furthermore, procedure in the courts, though a simplified version of the English model, remained too complex for West African conditions. The numerous forms required to pursue a claim, and the technical aspects of the courts' proceedings, compromised the very purpose of the court system. Instead of a cheap, summary method of redressing grievances, the Supreme Court substituted the expenses and delays inherent in a sophisticated legal structure, and - as will be shown[1] - failed from the start to bring within its pale the greater majority of the inhabitants of Lagos. Lastly, by embracing the entire scope of the colony's judicial functions, from Coroner's inquests to the Court of Appeal, the Supreme Court became administratively unmanageable. It was in part to facilitate the administrative work of the Chief Justice that District Commissioners

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1- See below, Chapter IV.

were transferred to the department of the interior in 1905.

To be sure, these drawbacks were recognised by the colony's officials. In fact, in 1901 the then Chief Justice of the Supreme Court, T.C. Rayner, advanced proposals for re-casting the shape of the judicial system, which he claimed was not meeting the colony's requirements in its present form.[1] His proposals called for a separation of the colony's inferior courts from the Supreme Court system. By accomplishing this, the inferior courts could then be given a definite civil and criminal jurisdiction, with simple rules of procedure applicable to them alone. As well, the constant shortages of personnel could be ended by empowering Justices of the Peace to sit and dispose of certain minor criminal cases in these courts, to remand prisoners, admit them to bail, sign summonses, and do other processes that occupied much of the time of magistrates and commissioners. After a while, these Justices of the Peace - drawn from the indigenous population - would be ready to assume most of the duties of a Police Magistrate, which in turn would free European personnel for the colony's more technical legal work.

In substance and form, Rayner's proposals envisaged a judicial system not unlike the one that obtained at Lagos in the early 1860's, when Sierra Leonean assessors sat in the settlement's Petty Debt Court and two Justices of the Peace could constitute the Police Magistrate Court. The wheel had almost come full circle for the Lagos

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1- Rayner to Macgregor, 20 Feb. 1901, in Macgregor to Chamberlain, 23 Feb. 1901, CO 147/154.

judiciary. His proposals, however, were not implemented in the colony; but one can discern in the court system subsequently established in a united Nigeria the lessons learnt from the experience at Lagos in the nineteenth century. The most striking feature of Lugard's report on the new judicial system of the amalgamated colony and protectorate of Nigeria is the awareness of the immense problems that would confront an English-type legal system in West African conditions; and its provisions for executive control over the judiciary, under the close surveillance of the Governor-General himself,[1] is reminiscent of the early court system established by Governor Freeman in 1862, with its emphasis on the Governor's control over the judiciary.

1- See, Lugard's report on the Amalgamation of Northern and Southern Nigeria, P.P. XXXVI, (609) (Command Paper 468) 1919.

Chapter IV

The Courts and the African Population

In the preceding two chapters, we have seen that the establishment of the legal system of the Lagos colony was largely influenced by Britain's changing role in West Africa. It has also been shown that the proper functioning of the courts was marred at first by the home government's indifferent attitude towards the fortunes of the colony, and throughout by its preoccupation with its financial resources. This chapter will examine more closely the character of the legal system as it developed within the context of colonial rule, and will show that the demands of the colonial situation took precedence over juridical considerations in determining some of its basic procedures.

It is the contention of this chapter that the legal system of the Lagos colony had to satisfy two fundamental requirements of colonial rule in West Africa: namely, that it had to safeguard the interests and fundamental rights of European - especially British - residents of the colony; and that essentially it had to support the authority of the colonial government. In this context, the provisions for trial by jury and the employment of counsel in the courts will be seen in a different perspective from that generally accepted by others writing about African legal systems.

Earlier we have seen that because of the exigencies of colonial

rule the independence of the Lagos judiciary from executive control could not be maintained to the same extent as that of its English prototype; justice was too important a function of government to be left solely in the hands of colonial judges. By the same token, the circumstances of colonial rule could not allow for those "niceties" of English law that might compromise the overall authority of the colonial government in the eyes of those it had to govern. With only a handful of European officials to rule an alien population approaching one hundred thousand by the end of the century, the underlying concepts of British justice were a luxury that could not be afforded. They were diametrically opposed to the demands of colonial rule, and as such ceased to be a right for the overwhelming majority of the colony's inhabitants. At the same time, the rights of Europeans had to be respected, and this inevitably led to a double standard in the application of justice that discriminated between the ingenuous and the sophisticated. While Europeans enjoyed the benefits of British justice, Africans reaped its harshness.

This contention is clearly borne out by some of the procedural innovations that were introduced into the legal system during the nineteenth century. The first involved the questioning of those on trial. It had been provided in 1876 that the court could examine an accused and put any questions to him which it thought proper. The accused would not be administered an oath or allowed to affirm, and no influence could be used to induce him to answer the court's

questions. As well, he could not be punished for refusing to answer, or, indeed, for answering falsely; but from a refusal to reply or a false answer, the court could "draw such inference ... as seems just".[1]

A need had been felt for such a measure in Lagos for some time. In fact, a similar enactment had earlier been suggested by Chief Magistrate R.D. Mayne, who had "seen slips of justice arise from want of this power".[2] Mayne did not specify how the situation in Lagos differed from the situation in England, where judges did not have this power either, but the difficulty at this time seems to have been the inability of the prosecution to obtain convictions. The dilemma was that although the court found it necessary in the interests of justice to compensate for the lack of defence counsel, nothing was being done to support the Crown's case, which was as poorly represented in court. Indeed, until 1871 there was no Crown Prosecutor in the settlement - this service usually being performed by resident British merchants.

In part, because of this deficiency, of fifty-eight persons tried in the Court of Civil and Criminal Justice in 1870, less than half were convicted. In the four years following the appointment of a Crown Prosecutor in 1871, however, the ratio of convictions to

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1- Ordinance 5 of 31 Mar. 1876, Sections 31-34, in Stallard and Richards, Ordinances of the Colony of Lagos.
2- Mayne to the Assistant Secretary of State, 20 July 1874, CO 147/30.

acquittals increased by over ten per cent.[1] But even with this increase, the prosecution could not have been viewed satisfactorily by a barrister such as Mayne, for the Crown Prosecutor was a Sierra Leonean, Charles Foresythe, who had no legal qualifications at all.[2] Although provision was made for a Queen's Advocate when Lagos and the Gold Coast were amalgamated in 1874, it was not expected that he would be able to prosecute in the three Divisional Courts of the colony, and, in fact, he seldom attended the Lagos Assizes. In order, therefore, to strengthen the prosecution's case, it was thought essential for judges to have the power to question accuseds.[3]

This procedure, however, was a departure from one of the fundamental rights granted to persons accused of crimes under English law; that is, the right of an accused not to bear witness against himself. For if the court had the discretion to draw inferences from an accused's refusal to answer its questions, or from his false answers, then this testimony or lack of it could itself become evidence against him. This is not, however, to say that this discret-

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1- In 1870, of 58 persons brought to trial, 27 were convicted - 47%. From 1871 through 1874, 102 of 176 - 57% - were convicted. See, Blue Books for 1870-74, CO 151/8-12.

2- Foresythe was appointed Crown Prosecutor in January 1871. See, Blue Book for 1871, CO 151/9. Foresythe was a merchant who had represented clients in the courts since 1865. In 1880, his licence to practise was not renewed, on the grounds that he was not competent in legal matters. See below, p.228.

3- This procedure had earlier been introduced into Indian courts and had worked well there. See, minute by Paunceforte, 15 Dec. 1874, on Strahan to Carnarvon, 27 Sept. 1874, CO 96/112.

ionary power was equally applied in all the cases that came before the courts. Indeed, Europeans or westernised Africans, who were aware of their right to refuse to answer the court's questions, or who were apprised of this right by counsel, had little to fear from their silence.

But for the vast majority of Africans who appeared before the courts, neither accustomed to English court procedures nor represented by counsel, the natural reaction would have been to answer the court's questions; and if subsequently these answers were found to be false, the court could draw its "just" inference. While this measure doubtless ensured that slips of justice would be minimised, on account of faulty or inadequate prosecution, it also discriminated against those who were least knowledgeable concerning court procedures and those who could least afford to be represented by legal counsel. In effect, it limited the right of an accused not to bear witness against himself to the European and emigrant communities.

The rights of those who were brought before the Lagos courts, or who sought to avail themselves of its services, were further restricted by the limitations imposed on trial by jury in the colonial courts. The right of trial by jury has been a basic right of Englishmen since the thirteenth century. Those who are among its most ardent supporters acclaim the right to a trial by jury as one of the major bulwarks of freedom. Despotic governments, to be sure, can pack juries, but historically they have found it more effective

to appoint subservient judges. Juries constitute an essential safeguard against the attitudes and prejudices of judges, who too often are influenced by extraneous matters.

English Judges during the second half of the nineteenth century are almost universally deprecated. A Member of Parliament during the 1870's quipped that "there are few judges whom any sane man would like to go before and there are fewer county court judges at whose tribunal it is not almost a misfortune to appear".[1] And an eminent political scientist wrote in the 1930's,

> anyone ... who studies the habits of the English judges in criminal trials half a century ago will realise that, whatever the presumptions of English justice, the judge did in fact assume that the persons charged were probably guilty; and the jury served the invaluable purpose of being a means of appeal from the fixed prejudices on the bench. [2]

Even allowing for overstatement, there can be little doubt but that the jury system served an important and useful function in nineteenth century English courts.

At this same time, throughout British West Africa there was a steady, almost unchecked erosion of the right to trial by jury in colonial courts. In 1866, trial by jury in the courts of the West African settlements was limited to criminal offences. Ten years later, the Supreme Court Ordinance limited trial by jury at the Gold Coast and Lagos to trials involving capital punishments alone,

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1- Quoted by Lord Devlin in The Listener, 13 Oct. 1966.
2- H.J. Laski, The Grammar of Politics, London, 1938, 559.

although the means were provided whereby the Governor could enlarge the scope of offences to be tried in this manner. From then until the end of the Lagos colony's independent existence in 1906, the employment of juries in criminal trials varied from their use in all cases involving felonious offences, except slave-dealing, to their abolition in all criminal cases but capital ones.[1]

The reasons advanced for the restriction of trial by jury to criminal trials after 1866, and at various times to capital offences alone, are generally that African jurors were prejudiced in favour of friends, relatives or fellow-tribesmen, and that the complexity of civil cases was beyond their capabilities.[2] This view, however, is not supported by contemporary evidence and is the result of a too eager acceptance of the one-sided explanations of colonial officials in both West Africa and London, and the glib writings of Victorian travellers who visited the coast. In Lagos, for example, the early ordinances establishing the Chief Magistrate Court had no provision for the employment of juries in the court's proceedings. According to Chief Magistrate Benjamin Way, the reason for their ex-

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1- Lees to Hicks Beach, 10 June 1878, CO 96/124; The Lagos Standard, 5 July 1905, "Editorial", for the provisions for trial by jury after 1876. The provisions for trial by jury in the courts of British West Africa in the nineteenth century can be found in J.H. Jeary, "Trial by jury and trial with the aid of Assessors in the Superior Courts of British African Territories", Journal of African Law, IV, 3, 1960, 133-46.

2- For two of the more recent expressions of this view, see, R.Knox-Mawer, "The Jury System in British Colonial Africa", Journal of African Law, II, 3, 1958, 160-63, and Jeary, "Trial by jury", op. cit.

clusion was that he had been informed of the impossibility of obtaining a jury at Lagos, thus leaving him no alternative but to make the court sole judge of fact as well as law. He also asserted that as the grand jury system had proved a failure at Lagos, provision was made for all offences to be prosecuted by information in his court.[1]

Neither of Way's contentions, however, were the result of actual experience at Lagos. In the first place, juries had not been a feature of any of the settlement's earlier courts, and later, when provision was made for their employment, there was no difficulty obtaining them. Moreover, the grand jury system could not have proved a failure at Lagos, as it had never been tried there. Ironically, Way did in fact employ grand juries at a later stage to frame indictments, but by then the procedure had fallen into disuse and Way was censured for resorting to it.[2]

Further misrepresentation of the working of the jury system at Sierra Leone prompted the abolition of juries in civil cases in all of the four West African settlements in 1866.[3] The witnesses who appeared before the Parliamentary Select Committee, which sat

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1- Way to Freeman, n.d., in Freeman to Newcastle, 9 Feb.1864, CO 147/6.

2- Trial by jury was first introduced into the Lagos courts by ordinance 7 of 6 July 1864, CO 148/1; Montagu to Kennedy, 1 Dec. 1869, in Kennedy to Granville, 14 Mar. 1870, CO 147/17. An indemnifying ordinance had to be passed to legalise the court's proceedings on the occasions when grand juries were used. Ordinance 5 of 11 Apr. 1870, CO 148/1.

3- Until their abolition in 1866, juries had been empanelled for civil cases in the courts of the Gambia, the Gold Coast and Sierra Leone. See, Jeary, "Trial by jury", op.cit.

during the previous year, were of the opinion that some alteration of the existing mode of trials in West Africa was necessary. The jury system, they alleged, worked on the whole fairly in criminal cases, but in civil matters they had become obstructive.[1] While the arguments in favour of abolishing juries in civil cases were lengthy, they totally lacked substance. Indeed, Lord Carnarvon, Secretary of State for Colonies in 1866, was reluctant to agree to this measure, as no evidence had been produced to indicate the return of even one improper verdict in a civil case.[2]

The experience of trial by jury in civil cases at Sierra Leone did not reveal the shortcomings attributed to it in 1866. To be sure, there had been some complaints in the 1850's about the fitness of Sierra Leonean juries to decide cases arising from charges of slave-dealing. The then Governor, Arthur Kennedy, deplored the instances of grand juries rejecting bills of indictment against recaptives accused of this crime. According to him, grand juries - and juries in general - were frustrating Britain's efforts to put down the slave-trade around Sierra Leone by refusing to indict or convict fellow-tribesmen. As a result of Kennedy's complaints, grand juries were abolished in 1853, and the following year the requirement of unanimity for jury verdicts was discarded in favour of verdicts by a two-thirds majority. Because of these changes, and

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1- Report of the Parliamentary Select Committee of 1865, P.P., 1865, v(412). See also, Carr to Rogers, 16 Feb. 1867, CO 267/292.
2- Fyfe, A History of Sierra Leone, 345.

despite Kennedy's fears that jurors would still not convict their countrymen, verdicts were regularly given against those accused of slave-dealing in succeeding years.[1]

Some alteration was also made before 1866 in the method of trying civil cases with a jury. In the early 1860's, cases involving claims of up to £100 were exempted from trial by jury, and in all other civil cases, the Chief Justice sitting with assessors could revise the amount of damages awarded if the verdict of the jury was not unanimous.[2] But these changes of procedure in civil trials had virtually no connection with the reason later advanced for the abolition of juries in all civil cases. These changes were, in fact, the outcome of the government's anxiety over a number of civil actions in which verdicts were brought against Europeans. The Europeans had abused members of the recaptive community or their own servants and had consequently been issued with summonses to answer charges of assault. In one case, the jury - consisting almost entirely of recaptives - awarded damages of £50 to a Sierra Leone tailor against a European who had assaulted him, and two later incidents resulted in out-of-court settlements of £30 and £10.[3]

By restricting trial by jury in civil cases to claims involving at least £100, the colonial authorities could prevent similar

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1- J.J. Crooks, A History of the Colony of Sierra Leone Western Africa, London, 1903, 189; Fyfe, A History of Sierra Leone, 271-72.
2- Ordinance 5 of 8 Apr. 1864, CO 269/2.
3- Fyfe, A History of Sierra Leone, 313-14, 330.

"exorbitant" damages being awarded in the future; and by empowering the Chief Justice, sitting with assessors, to revise damages awarded by a non-unanimous jury in all other civil cases, the presence of one European dissenting opinion would invalidate the award of damages by an otherwise unanimous jury. In fact, the Governor of Sierra Leone at this time, Samuel Blackall, went so far as to bring a bill before the legislative council requiring anyone initiating an action for assault to post security for the costs of the case in advance of its hearing. In this instance, the public outcry was so great as to force Blackall to withdraw the bill from consideration.[1]

In addition to the numerous colonial officials who were overcritical of "African juries", there were a number of British travellers who periodically descended upon the coast of West Africa, and on the basis of a short sojourn at each settlement, wrote accounts that portrayed African juries in an unfavourable light. Most prolific, and least objective, of these was the noted explorer cum adventurer, Richard Burton, whose writings generally reinforced the prejudices of those who objected to Britain's commitment in West Africa.

Burton himself was highly critical of the efforts of Christianity in Africa, and his caricatures of Sierra Leonean Christians

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1- Ibid., 330-31.
2- See, Burton's testimony before the Parliamentary Select Committee of 1865, op. cit.

compared unfavourably with the noble descriptions of Moslem Africans in the colony. On the basis of a three-day visit to Sierra Leone in 1861, in which time it seems doubtful that he ever witnessed a trial, Burton willingly corroborated the views of colonial officials on, among other things, the value of African juries. His exaggerated accounts of almost every aspect of colonial rule in West Africa reveal perhaps more about the traveller himself than about conditions in West Africa; nevertheless, they helped to mould opinions of African capabilities in the official as well as public mind, and helped to distort the experience of African juries before the Parliamentary Select Committee of 1865, before whom he appeared.[1]

Ten years after Burton had visited the coast, another traveller, Winwood Reade, visited Sierra Leone and added to the rather poor opinions that were held of African juries. While paying only scant attention to the question of trial by jury, Reade did report that "trial by jury in civil cases is at present impossible in Sierra Leone; verdicts would be given and damages awarded according to the nationality and colour of the parties concerned."[2] Reade's opinion

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1- Burton was in Sierra Leone in September 1861; yet the evidence concerning juries that is brought to the reader's attention are extracts from the Sierra Leone Weekly Times of 18 June and 30 July 1862. Besides, the Weekly Times was notorious for its denigrationof Sierra Leonean juries and its running feud with the large Aku (recaptives of Yoruba extraction) community. It appears that Burton, finding his strictures against juries rather difficult to digest without evidence, hunted about for support of his allegations, while writing up his account. His views on juries can be found in Wanderings in West Africa, London 1863, I, 215-23.

2- Winwood Reade, The African Sketch-Book, London 1873, II, 325.

was the official explanation offered in 1865 for the abolition of juries in civil cases. Indeed, by the time he appeared in the colony, trial by jury in civil cases had ceased to be a right for over five years. Nevertheless, retroactive aspersions were cast.

It was with similar retroactive glances that restrictions on trial by jury at Sierra Leone throughout the nineteenth century were justified. When, towards the end of the century, it was suggested that trial by jury in civil cases be restored at Sierra Leone, the Governor offered no objections and, in fact, was inclined to approve their restoration; however, the proposal was quashed when the spectre of an acquittal in the case of a defaulting official, some ten years before, was deliberately revived.[1]

It was the poor opinion of juries at Sierra Leone that led to the limitation of trial by jury to criminal cases alone in the courts of the West African settlements. At Lagos, there had not even been provision for juries in civil cases before 1866, but in common with the other settlements, trial by jury in civil cases was denied after 1866. Until 1876, there were no further restrictions placed on the right to trial by jury in Lagos. In the meantime, some difficulties were encountered with the jury system there. In 1869, Administrator Glover complained that some jurors had records of convictions, while others did not understand English very well and had to ask other jurors during the course of a trial what was being said. In one

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1- In this instance, it was A.W.L. Hemming at the Colonial Office who did not want juries restored in civil cases. Fyfe, A History of Sierra Leone, 496.

jury, one of those empanelled, Francis W. Joaque, was at the time wanted by the police at Sierra Leone.[1] But these were technical faults in the method of selecting jurors and not in the jury system itself, and a subsequent ordinance amended the procedure for selecting jurors and established qualifications for them.[2]

There were also more serious complaints; for example, it sometimes proved difficult for the authorities to prosecute certain influential individuals, as juries would have been reluctant to convict them.[3] But on the whole, and considering that trial by jury had only been introduced into the Lagos courts in 1864, the arrangement worked as well as could be expected, and there was no reason at the time to suspect that it might be abused in succeeding years.

However, with the amalgamation of the Gold Coast and Lagos in 1874, and the establishment of the Supreme Court two years later, the question of trial by jury again came under official scrutiny. Although previously there had been practically no disparagement of the working of the jury system at either the Gold Coast or Lagos, none of the officials involved in framing the court's constitution thought that trial by jury should be maintained in its present form. Indeed, where controversy did exist amongst them, it was over whether trial by jury should be retained at all. This unwarranted denigration of the value of African juries at the Gold Coast and

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1- Glover to Kendall, 16 Nov. 1869, G.P.
2- Ordinance 6 of 2 June 1870, CO 148/1.
3- Glover to Kimberley, 29 Dec. 1872, CO 147/26.

Lagos clearly revealed the prevailing prejudices against them, which to a large extent were the result of accounts like those written by Burton and Reade.

The Secretary of State for Colonies in 1871, Lord Kimberley, while unaware of the fact that criminal trials were conducted with juries in the courts of the West African settlements, had then voiced the opinion that he did not "think it expedient to confer that questionable blessing (that is, trial by jury) on the West Africans. A jury of Englishmen," he allowed, "is a tolerable institution, a jury of Irishmen often intolerable - a jury of blacks, I should say, always intolerable."[1] Three years later these prejudices were still present at the Colonial Office, although Lord Kimberley was not. The Permanent Under-Secretary of State, R.G.W. Herbert, compared the virtues of European and African juries in not dissimilar terms: "A European jury," he commented, "will not do justice to the case of a coloured man," but "a black jury is quite worthless, if not corrupt, in all cases."[2]

Because of this unduly harsh view of African juries, the right to trial by jury in the Gold Coast Supreme Court - and subsequently the Lagos Supreme Court - was restricted to cases involving capital punishment. But at the same time, it was also provided that the Governor by executive order could enlarge the scope of offences to be tried with a jury and appoint the places in the colony where this

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1- Minute by Kimberley, 19 Nov. 1871, on Kennedy to Kimberley, 19 Oct. 1871, CO 267/312.
2- Minute by Herbert, 24 Dec. 1874, on Strahan to Carnarvon, 27 Sept. 1874, CO 96/112.

would apply.[1] To be sure, the employment of juries in the Supreme Court could have been restricted outright to cases involving capital punishment alone; however, by granting the Governor the discretionary power to select both the offences for which juries might be used and the places in which they might be empanelled, a twofold purpose was served. To deny outright trial by jury in all but capital cases in places such as Lagos and Accra or Elmina and Cape Coast, where there were sufficient numbers of westernised Africans to empanel a competent jury,[2] would be arbitrary and would taint the administration of justice with a hue of prejudice. By providing the Governor of the colony with this discretionary power, such charges could be avoided.

On the other hand, however, this provision gave the Governor of the colony a powerful weapon with which to enforce a large degree of conformity. The working of the jury system would be scrutinised carefully by the government, who would not fail to make it publicly known when jury decisions failed to meet with their approval. In short, by granting this power to the governor of the colony, the right to trial by jury in cases other than capital ones ceased to be a right and had to be earned by "good behaviour" on the part of juries. In effect, it remained a right only so long as jury verdicts did not conflict with the views of judges or find disfavour

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1- Ordinance 5 of 31 Mar. 1876, Section 110.

2- In Lagos, for example, there were over 500 men on the jury list for 1881; see, Payne's Lagos and West African Almanac for 1881, 30-33.

in the eyes of the authorities - a very dubious right at best.

Whatever the purposes for it, the Gold Coast government did authorise the use of juries in most trials involving felonious crime in the colony's larger settlements. With the exception of the crime of slave-dealing, which the authorities did not think juries would convict, all other felonies could be tried with a jury at Cape Coast, Elmina, Accra and Lagos.[1] Initially, opinion of the working of the jury system in these places was favourable. The Chief Justice, David Chalmers, thought that so far as he could tell in 1878 the colony's juries were doing their work "faithfully and well". This, he claimed, was chiefly because of an extension of the jury lists to include more Europeans and Africans, which had gone far towards eliminating "the partizanship that formerly existed" among jurors.[2] But this temporary satisfaction proved short-lived; and in 1880, the wisdom of permitting trial by jury in cases other than those punishable by death was again being questioned by the Colonial Office.[3]

Once again, however, this sudden reappraisal of the value of juries, only two years after the Chief Justice had expressed his approval of them, does not seem to have had its foundation in the experience of trials with juries in the colony. It would seem that

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1- There still remained the option of trial before a judge and assessors in these four places.
2- Quoted in J. Mensah Sarbah's preface to Redwar, Comments, x.
3- See, minutes by Meade and Kimberley, 7 Sept. 1880, on Ussher to Kimberley, 19 July 1880, CO 147/41.

both the Colonial Office and officials in the colony were inclined to fault the jury system whenever possible, even, as in the case that occasioned the Colonial Office's concern, where no cause existed at all. The trial in question involved four men accused of slave-dealing on the Niger and was heard by the Lagos Divisional Court with the aid of assessors. There had been no question of a jury being empanelled in this case, as slave-dealing had specifically been excluded from the offences covered by the earlier executive order.

Still, the Governor, William Ussher, took this occasion to assert that had assessors not been employed in this case "every one of the accused would have been at once acquitted." Public opinion, according to him, was favourable towards the prisoners, because many liberated Africans domiciled in Lagos were large slave-owners themselves in the areas adjacent to Lagos and in the Niger basin.[1] However accurate Ussher's opinions were concerning public sympathy in this case, his assessment of the cause for this sympathy had little foundation in fact. The Governor had never visited Lagos, and his estimate of emigrant slave-holdings, though plausible for the land around Lagos where many Lagosians had their farms, was sorely misinformed as to the Niger. Sympathetic opinion probably did exist, but it was more likely the result of the court's presumption of jurisdiction over actions that occurred well beyond the colony's -

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1- Ussher to Kimberley, 19 July 1880, CO 147/41.

or for that matter, British - territorial jurisdiction. And it must have appeared hypocritical to many in Lagos that the government was prosecuting slave-dealing in the Niger, while tacitly accepting domestic slavery around the colony.[1]

Ussher further contended that in the course of the trial it became apparent that the assessors could not be relied upon to render an impartial decision; it was only the prosecutor's determination and the judge's decisive conduct that overruled "the preconcerted opinion of the native assessors", and resulted in the conviction of three of the accused. In all four cases, he argued, "the assessors stolidly and consistently declined to convict in the face of the clearest evidence."[2] Ussher's observations, however, reveal quite the opposite from what he intended to prove. The decision of the court in trials with assessors was vested solely in the presiding judge.[3] That the presiding judge could still see fit to acquit one of the accused "in the face of the clearest evidence", as Ussher had contended, must demonstrate that the Crown's case was less conclusive than the Governor was willing to admit. Indeed, as one Puisne Judge had earlier remarked, the great number of acquittals in the courts did not demonstrate poor qualities in juries, but that "commitments are made without sufficient evidence."[4]

1- Slavery is discussed more fully in chapter V.
2- Ussher to Kimberley, 26 July 1880, CO 147/41.
3- Ordinance 5 of 31 Mar. 1876, Section 129.
4- Statement by judge Jackson, quoted by Chalmers in his dispatch to Lees, 7 June 1878, in Lees to Hicks Beach, 10 June 1878, CO 96/124.

On the strength of this case alone, Governor Ussher warned that

> the jury question, both on the Gold Coast and in Lagos, is now assuming a dangerous aspect; and unless some amendment takes place it will shortly be impossible for the Government to obtain a conviction. - Were it not for the immense prestige of Mr. Woodcock (the Queen's Advocate), failures would have resulted more frequently than they have done already. With a weak judge and an incompetent prosecution it will soon become impossible to obtain a verdict. [1]

It was cynical, indeed, that on the basis of this complaint, itself the result of a trial with assessors, and Ussher's admission that a "weak judge and an incompetent prosecution" would lead to many more acquittals, the Colonial Office thought it imperative to institute inquiries into the feasibility of continuing trial by jury in the Gold Coast Supreme Court.[2] The Colonial Office, it would seem, was more interested in administering justice of a kind than in providing the framework in which justice could be administered impartially, and in accordance with English legal standards. What mattered seems not to have been the method employed in securing the ends of justice, but the favourable results obtained.

Governor Ussher's ominous forebodings and his poor opinion of African juries were not shared by most of the colony's judges. Indeed, criticism of the jury system was almost wholly confined to the non-legal personnel of the colony. One of the Governor's major

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1- Ussher to Kimberley, 19 July 1880, CO 147/41.
2- See, Colonial Office minutes, on ibid.

complaints was that "the class from which juries are mostly taken is unworthy of confidence".[1] Yet Chief Justice Chalmers had earlier anticipated that jury verdicts would improve because of the inclusion of more people on jury lists; and Puisne Judge James Marshall, was quite categorical in 1882 in declaring that "the admission of all men resident in the District (to jury rolls) has in my opinion been attended with good results throughout the colony".[2] There were some judges who were not entirely pleased with the way the system worked in a few places, but all, without exception, expressed approval of juries at both Cape Coast and Elmina. Some even went so far as to equate a Cape Coast jury with an ordinary Assizes jury in England, and to declare it better than many at Quarter Sessions.[3]

As for juries at Accra and Lagos, there was some disagreement even among the colony's judges. Juries at Accra, claimed one, frequently exhibited "a feeling of antagonism ... towards the court", which interfered with the proper administration of justice. A court system without juries, in his opinion, was better suited for

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1- Ussher to Kimberley, 26 July 1880, CO 147/41.
2- Chalmersto Lees, 7 June 1878, in Lees to Hicks Beach, 10 June 1878, CO 96/124; Marshall to Bramston, 15 June 1882, CO 96/147.
3- This paragraph and the following discussion of the opinions of juries at the various places in the colony are based on the following dispatches and letters: Collyer to the Lieutenant Governor, 3 Mar. 1881, Smith to Griffith, 21 Mar. 1881 and Macleod to Rowe, 19 Apr. 1882 (sic), in Rowe to Kimberley, 17 Apr. 1882, CO 96/139; Bailey to Rowe, 29 Apr. 1882 and Watt to Rowe, 6 May 1882, in Rowe to Kimberley, 11 May 1882, CO 147/50; Marshall to Bramston, 15 June 1882, CO 96/147; Turton to the Under-Secretary of State, 12 July 1882, CO 147/52; and Moloney to Kimberley, 12 July 1882, CO 96/141.

Accra. This view was seconded by the Colonial Secretary, Alfred Moloney (later to be Governor of Lagos); yet only once in his memory, and he had been on the Gold Coast since the Ashanti War, had a jury's verdict at Accra been questioned. On the other hand, Chief Justice Bailey had never found any antagonism on the part of Accra juries while he was on the bench, noticing instead that they were "most ready to accept the ruling, and to follow the direction of the Judges". And these views were supported by three of his colleagues.

It was much the same thing at Lagos. Puisne Judge Macleod felt the jury system had failed there. He was "highly dissatisfied with the moral qualifications of the men on the Jury list", and suggested that trials with a jury be limited to capital offences alone, the remainder being tried with the aid of assessors. Acting Puisne Judge Watt, whose experience at Lagos was limited to two visits, when he had held the monthly Assizes, agreed with Macleod's condemnation. On the basis of his experience there, Watt had found that "in spite of the most positive evidence of guilt of prisoners, verdicts of not guilty were returned" by Lagos juries. He cited one case in which, in his estimation, the prisoner's guilt was "fully established by the Crown Prosecutor". Yet although he "summed up the case very carefully to the jury, read to them the law on the subject and explained every point as well as he could", the jury retired and came back into court "almost immediately" with a verdict of not guilty.

But neither Macleod's nor Watt's opinion was supported by the senior legal officers in the colony. Bailey, who himself had little first hand knowledge of Lagos juries, had by this slight experience, still formed a good impression of them, and the former Puisne Judge of the Eastern Province, Marshall, held them in the highest regard. It had been Marshall's experience at Lagos,

> that when the Judge puts the evidence in a simple and impartial manner before a Jury, and lets them understand and feel that he trusts to their honour and oaths as much and as fully as a Judge in England does in an English Jury, there will in general be less danger of any miscarriage of justice than with Juries in England.

With the weight of judicial opinion in the colony opposed to the abolition of trial by jury, no changes were made. But in Lagos from the 1880's until the end of the century, this method of trial was gradually curtailed. By 1905, the year before the amalgamation of Lagos and Southern Nigeria, trial by jury had all but disappeared from the colony's courts. Now only the more serious offences were entitled to a trial in this manner, all other indictable crimes being tried by the court with the aid of assessors.[1] Apart from the same general criticism that had been made since the inception of the jury system in 1864, there was no attempt to justify the restrictions placed on trial by jury in the Lagos courts.

To be sure, throughout these years there were instances of juries returning verdicts that in the eyes of the authorities appear-

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1- The Lagos Standard, 5 July 1905, "Editorial".

ed contrary to the evidence presented in court. But upon examination of the cases that evoked official complaints, it becomes clear that the matter in question was not as straightforward and conclusive as represented by the government. One decision, which The Lagos Times called "a gross miscarriage of justice", and the colonial administration thought was rendered "in spite of the clearest evidence of his guilt", had been made by a jury that included in its numbers the European agent of the commercial firm of Witt & Busch, who apparently had agreed with the other jurors on the merits of the case. And another verdict for acquittal, although to the judge's mind "the evidence of ..... guilt was conclusive", had been the result of the jury being tampered with, and - as was later revealed - the fact that they had not been properly instructed by the judge.[1]

In addition, there were instances when it was claimed that because the accused commanded great respect in the community, a conviction could not have been obtained at Lagos. In such cases the government was forced either to withdraw its prosecution or, until 1886, transfer the cause to the courts in the western portion of the colony. But here too, the point in question was not as simple as that. One case, which the government decided not to prosecute, involved the Keeper of the Lagos gaol, E.T. Scott, an emigrant,

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1- Rowe to Kimberley, 13 Apr. 1882, and enclosures, CO 147/49; memorandum by S. Smith, in Young to Derby, 4 Oct. 1884, CO 96/160; Barrow to Hemming, 7 Oct. 1884, ibid.

with over eighteen years of public service. Scott was accused of criminal negligence for not enforcing stricter discipline in the gaol on the night before an execution was to have taken place. However, proper discipline in the Lagos gaol was always difficult to enforce, and what occurred on the eve of the execution was rather the result of Scott's poor judgement than anything amounting to criminal negligence. Despite these extenuating circumstances, and his eighteen years of public service, the government alleged that it intended to prosecute him but had to drop its charges because no jury in the colony would convict him.[1]

On another occasion, the government allowed the transfer of a case involving the well-known emigrant merchant J.P.L. Davies from Lagos to Accra. Davies' English creditors had accused him of fraud, and Governor Ussher was of the opinion that "no Lagos jury will give an impartial verdict in the case of this person."[2] While there were some grounds for believing that a Lagos jury would not find against Davies in this particular case, Ussher forgot to mention the way in which this case had been brought to trial. In the first place, Davies' creditors had retained the Queen's Advocate, Thomas Woodcock, to act on their behalf, whereas the accused had not been granted an adjournment pending his counsel's arrival. Secondly, the information upon which Davies was to be tried had been framed

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1- Griffith to Stanley, 13 Dec. 1885, CO 96/168.
2- Ussher to Kimberley, 26 July 1880, CO 147/41; see also, J.B.Wood, to the African Secretary, 30 July 1880, G3 A2/O.

in a lower court which had been held by Woodcock himself. To add to this parody of justice, it was on Woodcock's application that the Governor granted the transfer of venue from Lagos to Accra.[1] Although there might have been some justification in Governor Ussher's general criticism of African juries, in circumstances such as these, complaints were hypercritical.

One further case, in which a chief of a town near the eastern boundary of the colony was acquitted by a jury, needs to be mentioned here. The trial judge, Smalman Smith was dissatisfied with the verdict and complained that "there is some objection among Lagos juries to convict a chief, however strong the evidence and however conclusive the guilt".[2] But during the course of the trial, the jury had raised the question of the court's jurisdiction in the place the crime was committed. When Smith refused to allow the court's jurisdiction to be questioned, the jury then became unwilling to bring in a verdict of guilty, even in the face of conclusive evidence of the chief's guilt. The verdict was not the result of the jury's refusal to convict a man of rank - as Smith contended - but of their protest against what they considered to be the court's illegal assumption of jurisdiction.[3]

Characteristically, someone at the Colonial Office thought that judge Smith ought to report any similar "failures of justice", "as if frequent and flagrant they would constitute sufficient

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1- The African Times, 2 May 1881.
2- S. Smith to Moloney, 21 Sept. 1887, in Moloney to Holland, 21 Sept. 1887, CO 147/60.
3- Minutes of "Regina v Josseh", 6 Sept. 1887, in ibid.

grounds for abolishing trial by jury except in certain cases, e.g. capital cases." But the Colonial Office's legal expert, John Bramston, realised what had been the contended issue, and he even thought that the jury had been entitled to doubt the existence of the court's jurisdiction in this case.[1]

The charges against African juries, then, do not appear to have been well-founded. So far as the available evidence indicates, jurors in West Africa performed their duties as conscientiously and as competently as their counterparts in England. They may, in fact, have performed their duties even more conscientiously; for in the absence of any meaningful influence in the affairs of the colony, juries were the only instrument by which the African population in Lagos could voice its disapproval of government measures. In the wider interests of justice, juries often serve the useful purpose of softening the application of the law, which by its nature is rigid and uncompromising. As the examples above show, African juries were quick to question the government's right or propriety in prosecuting certain cases and its method of putting individuals in the dock. As well, juries helped to adjust the law, which in West Africa seemed unduly harsh, to fit the circumstances. In doing so, African juries were reacting in much the same spirit as English juries had a century before, when they refused to convict prisoners

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1- Minutes by Hemming, 4 Nov. 1887 and Bramston, 7 Dec. 1887, on ibid.

charged with minor offences that carried the death penalty.[1] On the whole, there were few complaints of substance against the working of the jury system, and considering the conditions in which it had to function, even those complaints were undeserved.

But the fact remains that throughout the nineteenth century, trial by jury in West Africa underwent continual reappraisal and was eventually restricted at Lagos to cases involving only the more serious offences. The answer, of course, is that trial by jury was incompatible with the demands of colonial rule in West Africa. In the colonial context, effective rule depended entirely on the authority wielded by the government over the indigenous population, and with only a limited, and largely inadequate amount of force to maintain order, the authority of the government depended on the effectiveness of its institutions and the regard in which colonial officials were held. Insofar as the jury system took the ultimate decision of a matter away from colonial officials and placed it in the hands of Africans, it was a direct threat to the government's authority.

In a similar vein, trial by jury threatened the very foundation of colonial authority by calling into question the judgements of officials and the efficacy of colonial institutions. In order

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1- In the 12 months from April 1793 to March 1794, half of the 1,060 persons committed for trial at the Old Bailey were acquitted, most of them for minor but capital offences. A. Harding, A Social History of English Law, London 1966, 276.

to uphold the position of colonial officers and to preserve the awe in which colonial institutions were held, the government had to ensure that measures such as prosecutions would succeed and that the dignity of judges would not be impaired. Moreover, in West Africa, where the government's authority was inextricably bound to the fortunes of Europeans, the jury system presented the constant danger of a whiteman being prosecuted and convicted by Africans. With colonial rule as tenuous as it was, the aura of white superiority had to be maintained at all costs.

In this light, the objections raised to the jury system in West Africa throughout the second half of the nineteenth century can be fully understood. In writing about his "black fellow-passengers" on his trip out to Sierra Leone, Burton quite neatly summed up the problem: "It is a political as well as social mistake", he argued,

> to permit these men to dine in the main cabin, which they will end by monopolizing: a ruling race cannot be too particular about these small matters. The white man's position is rendered far more precarious on the coast than it might be, if the black man were always kept in his proper place. 1

As for the restrictions placed on trial by jury in civil cases at Sierra Leone before 1866, and afterwards in the courts of the West African settlements, it has been remarked that the ordinance limiting trial by jury to criminal cases alone was "a device to enable

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1- Burton, Wanderings, I, 211.

European officials to beat their servants at will".[1] Finally, the eventual restriction of the jury system at Lagos to cases involving only the more serious crimes, was the result of the anxiety of colonial administrators who realised the inexpediency of conferring such legal benefits on Africans in the circumstances of British colonial rule in West Africa. Although most legal officers on the coast, as well as at the Colonial Office, regarded the working of the jury system with satisfaction,[2] its disadvantages far outweighed the legal principles involved.

Like the charges against African juries, a similar misrepresentation is found in the treatment of nineteenth century African lawyers. Lawyers in West Africa were accused of fomenting spurious litigation, of having only a pecuniary interest in their cases, and of being alien to the country in which they practised.[3] These accusations are largely distortions of the experience of lawyers in West Africa and have almost no relevance to the experience at Lagos.

1- Fyfe, A History of Sierra Leone, 344.

2- The Colonial Office's legal expert from 1880, John Bramston, continually opposed his colleagues' views on West African juries. See, for example, his minute of 16 June 1882, on Marshall to Bramston, 15 June 1882, CO 96/147, and his defence of a jury verdict in 1887, cited above, p.24. The dichotomy between judicial and executive opinions was still present in Lagos in 1897. See, McCallum to Chamberlain, 10 Aug. 1897, CO 147/116, for the Governor's warning that jury verdicts were being influenced by the Ogboni society; and Stallard to Chamberlain, 2 Oct. 1897, CO 147/128, for the Queen's Advocate's assurance that they were not.

3- For two contemporary opinions see, Burton, Wanderings, I, 215-23, and Mary Kingsley, Travels in West Africa, London 1897, 24.

At both the Gold Coast and Lagos, the Supreme Court was empowered in 1876 to adjudge that a cause had been brought "maliciously or without probable grounds", or that a lawyer "through any sort of deceit induced his client to enter into or continue any litigation". The lawyers so involved forfeited their fees and were liable for the costs of the case, in the event of the client's refusal to pay. Moreover, the court was given the power to regulate attorneys' fees: tables of fees had to be conspicuously displayed in their offices, and overcharging was punishable by a fine, in the first instance, and suspension of the practitioner's license for a subsequent infraction.[1] In fact, there is no record of any disciplinary action brought against a lawyer at either the Gold Coast or Lagos for contesting a spurious suit or for charging excessive fees from his client. It is impossible to deny or confirm the charge that lawyers had a purely pecuniary interest in their cases, but it is surely no more applicable to the lawyer in West Africa than to his colleague in Europe.

It is, of course, true that West African lawyers were mostly aliens who came to do well in the courts of newly-established British colonies. From the initial institution of colonial courts, the lack of English trained barristers and solicitors in these territories had to be made good by the introduction of lawyers from older

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1- Supreme Court Ordinance of 1876, First Schedule, Order VIII, Rules 5-12, in Stallard and Richards, Ordinances of the Colony of Lagos.

British colonies. We find, for example, West Indian lawyers practising in the early Sierra Leonean courts and a subsequent movement of Sierra Leonean lawyers to the courts of the Gold Coast and Lagos. A similar movement eastward by lawyers from the Gold Coast and Lagos followed upon the establishment of courts in the Niger Delta (Southern Nigeria) at the turn of the century. Without these movements along the west coast, there would have been no legal representation in colonial courts - at least in the first decade or so - or it would have been left to untrained, barely literate "bush-lawyers" or self-styled "advocates".

It was, in fact, the experience with early self-styled "advocates", and "attorneys" on the Gold Coast that led to most of the uncomplimentary views of West African lawyers in general. In 1853, with the establishment of a Supreme Court at the Gold Coast, some educated Africans began to specialise in the presentation of cases. As there were no barristers or solicitors practising in the courts at this time, these men were permitted to act as lawyers whenever their services were engaged by suitors.

Because of the administration's laxness, the notion became current amongst the people of the Gold Coast that access to the courts could only be gained through these men. Abuses soon followed. There were complaints that exorbitant fees were being charged and unnecessary litigation fomented.[1] In order, therefore, to con-

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1- This discussion of early "advocates" and "attorneys" on the Gold Coast is based on Chalmers to the Administrator-in-Chief, 3 June, 1873, CO 96/114 and Kimble, A Political History of Ghana, 68-70.

trol the activities of these "advocates", in 1864 some of them (six or seven) were licensed to practise in the courts. The following year, licenses were discontinued and all advocates could again be employed in the courts. In 1866, several of them fell foul of the settlement's magistrates and two were interdicted from practising in the future. Later in the year, the Administrator, Colonel E. Conran, debarred all self-educated attorneys, but when some petitioned the Colonial Office, their proscription was censured as arbitrary. In fact, on the Colonial Office's instructions, all advocates and attorneys were formally recognised by licensing and enrolling them "in the character and with the privileges of attorneys of Court".[1]

But the order licensing advocates lapsed in 1868 and there was reluctance to revive it. Advocates and attorneys could still practise in the Court of Civil and Criminal Justice, but they had first to satisfy the court that they had been specially employed by their client. As a further safeguard, they were prohibited outright from handling the execution of judgement debts. Most Gold Coast magistrates acted vindictively towards them. One Chief Magistrate had even to be relieved of his duties because of the way he had "injudiciously provoked (some of them) into hostility".[2] And most jurists felt that the restrictions placed on them were insufficient.

1- Chalmers to the Administrator-in-Chief, 3 June 1873, CO 96/114.
2- Statement by Governor-in-Chief Arthur Kennedy, quoted in Kimble, A Political History of Ghana, 69.

African advocates and attorneys, they claimed, not only multiplied the number of spurious litigations being brought before the court, they as well wasted a considerable amount of the court's time with irrelevant evidence that tended to confuse the issues.

In 1870, therefore, a new Chief Magistrate forbade them to act in civil cases involving Africans alone, and in 1873, it was suggested that they be prohibited altogether from acting in civil suits. The Colonial Office, however, were less inclined to judge them harshly and were not prepared to limit their employment in the courts to criminal trials alone. Instead, it was suggested that examinations be made compulsory for all advocates and attorneys in order to ensure their knowledge of the law and the procedure in the courts. It was also suggested that the fees charged for their services could be regulated, and any of them found accepting more than the determined fees could be debarred by the court.

It was in the light of this earlier experience with self-styled "advocates" and "attorneys" that the provisions for legal representation in the Supreme Court of the combined Gold Coast colony were made. By these provisions, all barristers and advocates in Great Britain and Ireland and solicitors in any of the courts of Westminster, Dublin or Edinburgh were allowed to practise in the Supreme Court, though the Chief Justice had the right to refuse admission to the bar on due cause, notwithstanding the person's qualifications. As well, the Chief Justice could admit as a solicitor in the court anyone who had served at least five continuous years in the office

of a practising barrister or solicitor resident within the court's jurisdiction, provided that the applicant passed an examination set by the court on the principles and practises of the law. If sufficient numbers of qualified barristers and solicitors were lacking in the colony, the Chief Justice could further admit "fit and proper persons" to act temporarily in a legal capacity. Admission to the bar in the latter two cases was limited to licenses for periods of up to six months, after which a license could be renewed or not, as the court saw fit.[1]

Despite these safeguards against self-educated or undesirable practitioners, the employment of legal counsel in the court was greatly restricted. By rule made under the auspices of the Supreme Court Ordinance of 1876, "the employment of lawyers in civil cases (was) subject to the approval of the court". Furthermore, where the parties to a cause were illiterate, counsel was specifically prohibited from appearing on behalf of either party, except by special ruling of the court. In addition, whenever a lawyer was engaged by only one party to a suit, and his client's action was successful, his fees were not recoverable in costs from the unsuccessful party.[2]

These restrictions were almost totally unjustified. There was no evidence in 1876 to indicate that African or European barristers and solicitors, trained in England at the Inns of Court, would behave any differently in West Africa from their counterparts in Eng-

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1- Supreme Court Ordinance of 1876, Sections 71-80, and First Schedule, Order VIII, Rules 1-4.
2- Ibid., Rules 5-12.

land.[1] Indeed, no attempt was made at this time to justify these restrictions in terms of past experience. The contention was now that legal representation was excluded for most civil cases chiefly because it was easier for a suitor to get justice done without one. Confidence in the courts - the argument ran - would be greater by having it generally known that anyone could go to court without a middleman and receive the benefits of colonial justice. Thus, if one party to a suit employed counsel, this would undermine the very basis of this idea, as "ignorant natives" would then feel compelled to retain lawyers to represent them. By way of supporting these rather thin arguments, it was also pointed out that the employment of someone, with no personal interest in the case, to represent a suitor or defendant was alien to the ideas and wishes of Africans.[2]

The official logic for severely circumscribing the employment of lawyers in the colony's courts was faulty and contrived. In the first place, the question of whether there should be legal representation in the courts had earlier been answered by the Colonial Office, when it refused to proscribe outright the employment of self-styled advocates. Next, the surmise that it was alien to African ideas and wishes to have a disinterested representative appearing on their behalf, had partially been proved false by the extensive use made of advocates before it became commonly supposed that entry to the courts could only be gained through them. Furthermore, to

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1- The first qualified African barrister to practise in the Supreme Court was C.A. Sapara-Williams, who was called to the Bar from the Inner Temple in 1879.

2- Chalmers to Strahan, 30 Mar. 1876, in Strahan to Carnarvon, 31 Mar. 1876, CO 96/118.

disallow legal representation in colonial courts on the grounds that it was alien to the African mentality, is to argue that British-trained lawyers aiding plaintiffs and defendants in English-styled courts would seem unnatural to Africans, while the courts, themselves, and the procedure in them would not. Lastly, even if it had been desirable to restrict the practices of African"advocates" and "attorneys", there was no compulsion to restrict the employment of qualified barristers and solicitors. Surely untrained African "lawyers" could have been prevented from committing excesses by establishing two categories of court practitioners, one to include all trained barristers and solicitors, and the other to include all those thought fit to be licensed by the court, the former having the same rights as their counterparts in England, while the latter being allowed to practise only under conditions established by the court.

No arrangement, however, was made to separate the rights of African barristers and solicitors - or for that matter, the rights of English barristers and solicitors practising in the colony's courts - from those of licensed advocates, nor, in fact, was one contemplated. It is clear, therefore, that official reasons do not explain the restrictions imposed on the employment of lawyers in the Gold Coast Supreme Court. Nevertheless, the explanation can be inferred from the general attitude of administrators towards the court system, and particularly the controversy over the use of juries. It was fully realised that most District Commissioners

and some Supreme Court judges in the colony would be young and relatively inexperienced jurists, some not even qualified in the law. Conditions of service on the coast being what they were, this was the best that could be expected. There was the risk, therefore, that young law officers, whose first practical experience on the bench more often than not came after their arrival in West Africa, would not be capable of upholding the dignity of their court, while contesting a point of law with a shrewd, experienced African lawyer.[1] Colonial rule in West Africa was dependent on the aura surrounding the white-man's authority, and the prospects of a white judge (or District Commissioner) being made to look the fool by an African lawyer was sufficient cause to provide as far as practicable against this. Since black lawyers alone could not be prohibited from practising in the courts, all legal practitioners, colour or qualification apart, were restricted.

Secondly, the paucity of legal officers in the colony would not allow for the increase in court business that it was feared would have resulted from the African populace's widespread awareness of their rights in colonial courts. Excluding spurious litigations, the flood of legitimate land claims and minor civil actions involving illiterate Africans would have inundated the sparsely scattered colonial court system, if Africans became fully apprised

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1- As the Supreme Court was enjoined to administer "native law" in certain circumstances, the risk of young English barristers being unequal to African lawyers was very real. The law administered in the Supreme Court is discussed more fully below, Chapter V.

of their legal rights. As long as African lawyers could not be employed in cases involving illiterates, and their fees were severely limited in other instances, these minor claims would not find their way into the colony's courts. Important civil matters would in any event still be brought to the courts' attention, but these were comparatively few in number and usually involved European establishments. In effect, the restrictions on legal representation in the courts withheld from the average African knowledge of his rights in colonial courts, thereby freeing the judiciary for more important commercial matters.

The restrictions placed on the employment of barristers and solicitors in the Supreme Court were, therefore, not the result of unethical practices by qualified African lawyers. Nor can it be accepted that considerations for what Africans found more natural had much to do with them either. There were, to be sure, good reasons for putting an end to the abuses committed by self-styled "advocates" and "attorneys"; but the partial restriction of the employment of African barristers and solicitors in colonial courts, on account of this earlier experience, was both unwarranted and arbitrary. Like African juries, however, African lawyers posed a threat to the relationship that existed between white ruler and black subject, and like African juries, therefore, they too had to

be limited in the scope of their activities.[1]

Although lawyers were prohibited throughout from appearing in causes to which both parties were illiterate, after the separation of Lagos from the Gold Coast, most other restrictions were relaxed. As a matter of course, lawyers appeared on behalf of clients in civil actions, though by law the court's consent had first to be obtained. The Chief Justice of the Lagos Supreme Court explained in 1903 that the rules restricting the practices of lawyers had largely fallen into desuetude because of the general advancement of the people of Lagos over the past years.[2] But there were other reasons as well. The relaxation of the rules governing the employment of lawyers in the courts was also the result of the growth of the legal profession in Lagos, the influence they had begun to wield and the esteem in which it was held by the colonial authorities. By the turn of the century there were nine barristers practising in the courts, representing the most import-

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1- In defending the total exclusion of lawyers from the Provincial Courts of Nigeria, Chief Justice E.A. Speed wrote: "having regard to the fact that the judges of the Provincial Courts are mostly not professional men, the presence of counsel taking part in the proceeding having higher professional qualifications than the bench is not fair to the latter as tending to impair its authority and destroy public confidence in its decisions". Petition by the Nigerial Reform Association to Sir F. Lugard, 11 Feb. 1914, Memorandum "A".

2- Nicoll to Macgregor, 14 Dec. 1903, in Macgregor to Lyttleton, 15 Dec. 1903, CO 147/167.

ant European and African interests on the island.[1] Africans such as C.A. Sapara-Williams and Kitoye Ajasha and Europeans of the stature of Neville Geary were highly respected members of the Lagos community, who were commonly used by the government in the conduct of the colony's legal business. From time to time, almost all of the members of the Bar prosecuted for the Crown at monthly assizes, and some acted temporarily in official capacities, when the government required the services of legal personnel.[2]

Of course, the Lagos Bar was not always above reproach. In 1880, the license of Charles Foresythe, who had practised in the courts for fifteen years, was not renewed. Neither a barrister, nor a solicitor, Foresythe had earlier in the year been convicted of perjury and had also been prosecuted for fraud for drawing up a faulty document that cost his client £100. The following year, the license of a European practitioner, G.E. Moss, was revoked for unprofessional conduct on his part, and in 1882, Sapara-Williams received a severe rebuke from the Chief Justice and was nearly debarred on the advice of the Colonial Office.[3] In succeeding years,

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1- African barristers practising in the courts at this time were: C.A.Sapara-Williams, Kitoye Ajasha, A.J.Bucknor, G.H.Savage, J.E. Shyngle and Rotimi Alade. There were also three European barristers: H.W. de Sausmarez, E. de L.Colinson and W.M.Neville Geary. By 1906, five more African barristers had been added to the bar: P.R.Taylor, J.T.N.Cole, E.J.A.Taylor, S.H.Bucknor and S.L.O. Macauley.

2- De Sausmarez acted as Queen's Advocate in 1891 for a short period, and de L.Colinson was employed on numerous occasions as a District Commissioner.

3- Macleod to Griffith, 8 Dec.1880, in Griffith to Kimberley, 8 Dec. 1880, CO 147/42; J.B.Wood to the African Secretary, 30 July 1880, G.3. A2/0; Marshall to Rowe, 30 Dec.1881, and report by Griffith, in Rowe to Kimberley, 13 Apr. 1882, CO 147/49; CO to Rowe, 26 May 1882, ibid.

distrust of the legal profession was openly expressed by the Lagos press, particularly The Lagos Weekly Record. The newspapers regularly noted for their readers "the depths" to which the legal fraternity at Lagos had fallen, principally by inaugurating a system of touting for business "wholly unknown before in the practice of the profession".[1]

Well-founded or not, these complaints were no longer shared by the colonial authorities, whose former hostility had by then been replaced by an acknowledgement of the valuable part played by the Bar in the colony's affairs. In fact, the government sided with the legal profession on many controversial issues which concerned the regulation of the activities of non-legal persons performing legal functions. In one instance, a bill was proposed to make it illegal for non-qualified lawyers to draw up legal documents for illiterate people. Objections to the bill were raised by the large Muslim community in Lagos, who had their own professional draftsmen, and the press, who characteristically charged that the bill would benefit the members of the Bar alone. With strong opposition to the bill, the government was reluctant to force the issue and amended it to provide only that a legal document would have to be signed by the writer and countersigned by the mark of the person who requested it to be drafted.[2]

1- The Lagos Weekly Record, 14 Oct. 1905. The Record's "crusade" against the legal profession at Lagos dates from the 1890's.
2- Carter to Chamberlain, 18 June 1896, CO 147/105; The Lagos Weekly Record, 13 June 1896; ordinance 7 of 15 June 1896, CO 148/2.

Almost ten years later, however, the government again introduced a bill to confine the preparation of legal documents to qualified lawyers. By this time - 1904 - there had been a large increase in the number of "professional will-writers", whose products too often contained clauses entitling them to a moiety of the estate and even controlling power over it.[1] Accordingly, an ordinance was passed which made it a misdemeanour for "unqualified" persons to draw or prepare legal documents.[2] But because objections had again been raised to the consequences of the bill, all remuneration for services in these matters had to be in accordance with a scale of fees to be drawn up by the Supreme Court. As well, in deference to the opinions of the Muslim community, the government did not insist that all legal documents be prepared by lawyers. "Qualified" persons, it was explained, could include all those who had prepared such documents in the past and were found to be competent and honest. The Chief Justice was empowered to license such persons as solicitors in the Supreme Court, and the court would, thereby, be in a position to regulate the practices of those who contravened the ordinance.[3]

It can be seen, therefore, that the highly critical view of West African lawyers in the nineteenth century is not justified. It is based largely on the early experience of self-styled "advo-

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1- The Lagos Weekly Record, 23 Jan. 1904.
2- Ordinance 11 of 16 May 1904, CO 148/3.
3- Ross to Moseley, 16 May 1904, in Moseley to Lyttleton, 16 May 1904. CO 147/170.

cates" and "attorneys" in the courts of the Gold Coast, and is misplaced when applied to the qualified African lawyers of the latter two decades of the century. Indeed, it was the growth of the African legal profession that put an end to the abuses of these early practitioners, and it was their subsequent exclusion from native courts under Indirect Rule that gave rise to similar malpractices almost a century later.[1] African lawyers were a necessary feature of the type of legal system established in Lagos, and by the beginning of the twentieth century, their importance was recognised by the colonial authorities.

The restrictions placed on some of the basic rights of African prisoners and litigants were, therefore, dictated by the exigences of colonial rule in West Africa. Courts, juries and lawyers are safeguards against arbitrary government measures; but colonial rule depended largely on the absolute authority of the executive. Insofar as the ultimate resolution of matters of importance was in the hands of colonial judges or African juries, this authority was weakened. Justice was too important a function of colonial rule in West Africa to be administered according to the will of judges and the consciences of juries.

1- The Blackall committee reported in 1943 that because regular practitioners had not been allowed to appear in "Native Courts", a race of "bush-lawyers" had sprung up who appeared for parties under the pretense of being members of the litigant's family. Officials complained of the activities of these men, who were poorly educated and had only a slight knowledge of English law, and whose "sole object being to make money, they tout for business and foment frivolous litigation". Report of the Native Tribunals Committee of Enquiry of 1943, 14.

Official and unofficial attitudes towards Africans were an important factor in determining the impact of colonial courts on the African population of Lagos. It has already been shown that because of the tenuous nature of colonial rule in West Africa official sanction was given to measures that severely abridged the rights of Africans who appeared in the courts. To what degree this sanction indicates a prejudiced attitude against Africans, and not simply the nature of the demands of colonial rule, is beyond the scope of this argument; but it cannot be gainsaid that an element of prejudice was present in measures that clearly discriminated in favour of Europeans. This prejudice is noticed not only in official policy but in the daily functioning of the courts. Whether this policy merely reinforced the prejudices of those who administered justice or, in fact, produced the atmosphere in which it could flourish is a matter of degree rather than kind. The prevailing opinion of Europeans in Lagos was prejudiced against Africans, and this, in part, determined the extent to which they were brought within the pale of the colonial court system.

In the early years of the settlement's history, there were numerous instances of Africans being treated arbitrarily by government officials. On one occasion, some Lagos chiefs were imprisoned by the Police Magistrate, Thomas Mayne, for protesting against the provisions of a recently passed ordinance. Another time, Governor Freeman proposed to confiscate the property of a Sierra Leonean, who was advocating "Africa for the African", while temporarily re-

siding in Abeokuta, on the grounds that he was an "absentee conspirator". Freeman argued that his actions were treasonable and confiscation of his property "would certainly serve as a warning to others", but the Colonial Office would not contenance the procedure and thought their Governor "ought not to require to be told that he cannot confiscate a man's property without trial".[1] As well there were complaints that court sentences were too severe and its decisions hurriedly considered. For allegedly stealing four bags of cowries and a piece of silk, one Sierra Leonean was sentenced to two years imprisonment at hard labour. Six months later, however, he was released after one of the assessors of the court that had tried him expressed a belated belief that the evidence at his trial had been maliciously inspired.[2]

While most of these early complaints were the result of the growing pains of the new settlement and unfamiliar procedures, by the end of the first decade of British rule more ominous signs had appeared. In 1871, members of the native community appealed against their treatment by Police Magistrate Gerard. They petitioned the Colonial Office claiming that:

> for the last two years, we and our people have been subjected by him to the greatest and most extreme rough handling. When any of us have occasion to come before him as Police Magistrate our grievances or our defences

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1- Memorial of African chiefs to Colonel Ord, 27 Dec. 1864, in Ord's Report, op.cit., 49; Freeman to Newcastle, 9 Apr. 1863, CO 147/6; minute by Barrow, 11 May 1864, and minute by Fortescue, 13 May 1864, on ibid.

2- Sierra Leonean Memorial to Colonel Ord, 27 Dec. 1864, in Ord's Report, op. cit.

> are heard with the utmost offhanded manner, and very often the accuser and the accused are both subject to disgraceful remarks from him added to either a fine or imprisonment; very often our Elders are spoken to by him in open court in the most offhanded and contemptuous expression imaginable; thus subjecting us to annoyance and indignities. [1]

Although the charges against Gerard were summarily dismissed in London as being too general,[2] the Administrator of Lagos, John Glover, could appreciate these complaints. Over the past few years he had noticed the growth of a double standard in the application of justice, one for Europeans and one for Africans. He could point to the example of an Englishman being sentenced to four months in prison with hard labour for attempting to rape a seven year old girl, whereas an African accused of the same offence received a sentence of three years in prison with hard labour. Moreover, while he served his four month term, the Englishman's lot had been made quite comfortable by the Colonial Surgeon, who intervened on his behalf and screened him from the rigours of his sentence.[3]

Yet another instance of this partiality could be seen in the proceedings of the Court of Civil and Criminal Justice under Chief Magistrate Benjamin Way. On one occasion, a European Captain of a merchant vessel, accused of murder, was allowed to change his plea and escape with a nominal fine after a jury of ten Africans and two Europeans could not agree to a verdict - the Europeans holding out for acquittal. Way permitted the Captain to change his plea from

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1- Petition of 31 Aug. 1871, in Kennedy to Kimberley, 27 Nov. 1871, CO 147/21.
2- Kimberley to Kennedy, 6 Jan. 1872, CO 147/21.
3- Glover to Kendall, 16 Nov. 1869, G.P.

innocent of murder to guilty of assault, and then fined him £10.[1]

While Glover was at Lagos, discrimination in the administration of justice remained unofficial. Glover personally deplored it and denounced it whenever it was brought to his attention. But after his departure from Lagos in 1872, and especially after 1874, when Britain strengthened her commitment on the Gold Coast, discrimination between European and African became more pronounced and less unacceptable to the colonial authorities. Examples of the wide disparity in the treatment of whites and blacks for the most part went uncommented upon by the government. Thus, we find in 1877, that an English sea-captain, convicted of manslaughter and sentenced to two years penal servitude, was freely pardoned on a technicality without even remaining in prison until the Colonial Office could review the case. But at about the same time, an African found guilty of manslaughter, and recommended to mercy by the jury, received a sentence of ten years in prison; and although extenuating circumstances brought out in the course of the trial led both the editor of The African Times and the Colonial Office to expect a recommendation by the Queen's Advocate for an early remission of his sentence, a year later none had been made.[2]

1- Ibid. See also, The African Times, 24 Jan. 1870, Glover suspended Way after this case, but the Colonial Office reinstated him. See, minute by Barrow, 28 June 1870, on Kennedy to Granville, 7 June 1870, CO 147/18.

2- Freeling to Carnarvon, 26 Oct. 1877, and enclosures, CO 147/33. This case, Regina v. Shanklin (4 Oct. 1877) is mentioned briefly in Elias, The Nigerian Legal System, 71. Fitzgerald to Hicks Beach, 23 Nov. 1878, and enclosures, CO 147/36; minutes by Hemming and Herbert, 26 Nov. 1878, on ibid.

Similarly, the treatment accorded J.P.L. Davies, when the court refused an adjournment until his counsel could arrive to defend him, differed substantially when the defendant was a European. In a civil action brought by the government against the firm of Messrs. Miller Brothers and Company, the defendants applied for and received three adjournments of court over a four month period, alleging that pertinent evidence was en route from England. The evidence in fact, never arrived.[1]

Of course, discrimination in favour of Europeans often meant prejudice against Africans. To many in the colony, there was little doubt that white judges and District Commissioners sided with Europeans involved in civil causes with Africans. The authorities were over sensitive about this charge and instituted a libel suit against The Lagos Observer when the paper, in a mildly worded editorial, complained of this apparent prejudice. Needless to say, the government won their suit.[2]

With Africans accused of criminal offences, the consequences of prejudice were as evident. Even in ideal conditions, justice is difficult to administer; all too often evidence before the court is circumstantial and virtually impossible to verify. In such cases, the court is forced to rely on the accused's character and its own assessment of the probability of criminal action. In West Africa,

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1- Turton to Moloney, 3 Apr. 1879, in Moloney to Lees, 3 Apr. 1879, CO 147/37.
2- The Lagos Observer, 18 May and 1 June 1882.

where the conditions in which justice had to be administered were far removed from the ideal, the picture before the minds of young, inexperienced District Commissioners was that of the stereotyped African, shiftless, lazy, prevaricating. In determining the guilt or innocence of a prisoner standing in the dock, the onus of proof in such circumstances was more often on the accused than on the prosecution.

Obvious injustices, of course, could be amended by appeal to higher courts or by the executive exercising its right to pardon or remit sentences. But in Lagos the probability of a prisoner being aware of his right to appeal, much less influential enough to bring pressure to bear on the executive, could not have been very great. It was, indeed, rare that a Chief Justice would openly disagree with the decision of a colleague and recommend the executive pardon; and although Chief Justice Bailey once did make such a recommendation when a case decided at the Lagos Assizes had not been proved to his satisfaction, the case in point involved an educated emigrant, known and respected by the community, who knew of his right to petition the Governor.[1]

This must argue that if a well-known, literate African of good standing could be convicted by evidence that the Chief Justice later deemed insufficient, the number of illiterate Africans of casual employment who were convicted without the charge being reasonably

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1- Griffith to Kimberley, 26 Nov. 1882, and enclosures, CO 147/51.

proved must have been legion. This can be seen more dramatically in the statistics of trial verdicts in the Lagos courts during the nine year period 1877-1885, when over eighty per cent. of all trials resulted in convictions, as the chart below shows.

CONVICTIONS AND ACQUITTALS, 1877-1885 *

Held by	Cases Tried	Convictions	Acquittals	% Convictions
Assizes	800	578	222	72.2
D.C. Courts	5,164	4,194	970	81.2
Totals	5,964	4,772	1,192	80.0

* - Figures from Blue Books for 1877-1885, CO 151/15-23.

Even in India, the figures for convictions never reached this height, and in 1891, less than fifty per cent. of all criminal prosecutions resulted in convictions.[1]

Prejudice against Africans often manifested itself in less striking ways. It is the nature of the prejudiced person to believe those things that help support his prejudice, in spite of the ludicrous form they sometimes take. Extraordinary procedures can then be justified in terms like, "it is all to their own good" or "they won't really notice the difference anyway". There is no lack of examples of this during the colonial period in West Africa; one should serve to illustrate the way in which these sentiments crept into the administration of justice. In 1883, the Governor of the Gold Coast colony, Samuel Rowe, appointed the District Commissioner of Lagos, Commander Rumsey, acting Puisne Judge of the Eastern Province (Lagos) for the specific purpose of hearing some land

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1- The Imperial Gazetteer of India, Oxford 1907, IV, 158.

claims. These cases had been scheduled for hearing by judge Quayle-Jones, but he had been called back to the Gold Coast before their appointed date. Rowe explained that it would have been just as proper for Rumsey as District Commissioner to hear these claims; but the temporary appointment was made because the claimants "would be more satisfied if they stated their case before the Supreme Court. Mr. Rumsey, therefore, in acting as Judge performed only in a different position the same duties which I should have called on him to do as Commissioner if I had not appointed him to this post." African reaction to this is not mentioned, but someone at the Colonial Office could not help but comment on the "curious arrangements" the Governor thought necessary.[1]

The attitudes of colonial officials towards Africans turned for the worse in the last decade or so of the nineteenth century. By and large, this change was prompted by the prevailing intellectual climate of Europe, particularly as regards the growth of race theories and the application of Social-Darwinism to European and non-European societies. Racial prejudice had now a firm, intellectual foundation, and more than ever Europeans conceived it their duty to uplift their less fortunate black fellow-humans to the heights of European civilisation.

Accordingly, attitudes towards Africans became more paternalistic, and all Africans - educated or not - were viewed as childlike,

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1- Rowe to Derby, 28 June 1883, CO 96/150; CO minute, on ibid.

ingenuous creatures. With the discovery of the prophylactic uses of quinine, and the consequent growth of a corps of European African administrators, Africans found themselves being eased out of positions of responsibility in the colony. Where formerly some departments of government had been headed by Africans since the start of British rule, by the turn of the century, these positions were occupied by Europeans. A European replaced the African Keeper of the Lagos gaol in 1889, and ten years later one was chosen to replace the retiring J.A. Payne as Registrar of the Supreme Court. In 1901, the same happened as regards the Lagos Post Office.[1]

Africans were eased out of positions in the colonial government by indirect ways. This was sometimes accomplished by imposing difficult conditions on their continued service. In the 1880's, the strict enforcement of the prohibition of "high" government officials engaging in trade either themselves or through their wives and relations led to some resignations and discouraged others from offering their services. And in 1897, Governor McCallum's objection to colonial officials holding property in Lagos, directly resulted in the resignation of the Surveyor of Crown Grants, Herbert Macauley, and the premature retirement of the Registrar of the Supreme Court, J.A. Payne.[2] As for the courts, whereas Africans had previously been regularly employed as District Commissioners, none were appointed

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1- See, Blue Books for 1889, 1900, 1901, CO 151/27, 38, 39.
2- McCallum to Chamberlain, 10 Aug. 1897, CO 147/116. This was the Herbert Macauley, one of the earliest "makers" of modern Nigeria.

to commissionerships after the resignation of George Smith in 1889.[1]

The trend against the employment of Africans in responsible positions was briefly checked during the governorship of Sir William Macgregor, 1899-1903. Macgregor deemed it essential for Africans to participate in the colony's government and to render advice freely on matters that concerned the African community at Lagos. Against the wave of prejudice that had engulfed the minds of officials in London as well as on the west coast, Macgregor lent support to a proposal that would have empowered Justices of the Peace to sit and dispose of certain minor criminal cases in the courts. This arrangement would have allowed for the training of Africans in court procedures and eventually for their widespread use in the administration of justice.[2] The Colonial Office, however, did not have Macgregor's fervent desire to see Affricans playing a larger role in the colony's courts or, for that matter, in the colony's affairs. Officials at the Colonial Office were wary of "trying cases by a bench of magistrates in which coloured Lagos gentlemen are in a majority", and the proposal, therefore, did not receive its sanction.[3]

During an earlier period, Macgregor's attitudes towards Africans would have received the attention they deserved. By the end of the century, however, his pro-African policies were an anachronism.

1- He was replaced as District Commissioner of Leckie in January 1890 by George Stallard, an English barrister. See, Blue Book for 1890, CO 151/28.

2- Macgregor to Chamberlain, 23 Feb. 1901, CO 147/154.

3- See, minutes by Cox, 13 May 1901 and Antrobus, 14 May 1901, on ibid.

Since the scramble for African territories in the 1880's, Britain's commitment in West Africa had increased inland from the coast. In the area that was later to become Nigeria, this commitment was at first discharged by the Royal African Company under Sir George Goldie; but with the advancement of French interests in Dahomey and on the upper Niger in the 1890's, the surrogate rule of chartered companies was no longer adequate.[1] The new protectorate of Northern Nigeria, however, comprised much larger bodies of Africans who were more alien and liable to revolt than the coastal peoples; and because sources of revenue in the north were limited by the area's geography and its predominant religion, European personnel would be even more thinly spread. In such circumstances, more reliance than ever was placed on race prestige.

The demands of colonial rule in Northern Nigeria had their repercussions on Lagos. The authorities' attitude towards the African community became more rigid: opposition to government measures was muzzled. In 1903, an ordinance prohibited the publication of newspapers in Lagos, unless a bond of £250 was posted with the Chief Registrar. Official reasons for this measure claimed that it would ensure that a successful plaintiff against a newspaper would be able to collect at least the amount of the bond in damages; however, as there had been only three libel actions against Lagos newspapers since the first one appeared in 1863, this was a frivolous excuse

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1- J.E. Flint, Sir George Goldie and the Making of Nigeria, London 1960, 265-66.

for silencing African criticism.[1]

To what extent the exclusion of Africans from positions of responsibility in the colony and the hardening of official attitudes towards Africans influenced the administration of justice is difficult to assess. Without Africans in positions of responsibility, there must have been even less empathy than before between the bench and African prisoners; and the tendency to de-personalise Africans in the dock must have become even greater. Moreover, the personal prejudices of the bench were now tacitly accepted by the authorities, whose primary concern was with the increasing demands of colonial rule in the region.

Whereas formerly the harsh and unduly severe sentences meted out to Africans occasioned comment by either the government or the Colonial Office, no such comment was forthcoming after the tide of imperialism had turned. Sentences like life imprisonment for manslaughter and fourteen years imprisonment for burglary or forgery were a commonplace and had earlier evoked remarks from the Colonial Office. The sentence of fourteen years for forgery was - to Holland's mind - "unnecessarily severe", and although the prisoner serving this sentence had a poor prison record, Holland recommended he be considered for remission in two years time, if his record in prison improved.[2] But although evidence against prisoners remained

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1- Ordinance 10 of 5 Oct. 1903, CO148/3. The debate on the merits of the ordinance can be found in the pages of The Lagos Standard and The Lagos Weekly Record for the weeks before and after its enactment. The moderate tone of editorials after 5 October 1903 shows if not the reason for the legislation then certainly the effect it had.

2- Minute by Holland, 6 Jan. 1888, on Moloney to Holland, 2 Dec. 1887, CO 147/61.

difficult to obtain and some cases proved impossible to decide,[1] opposition to harsh sentences had been successfully stifled by the turn of the century and comments were no longer forthcoming on such accounts.

With all the obstacles that confronted Africans in colonial courts, it should not be unexpected that Africans for the most part did not avail themselves of their services. In 1865, Colonel Ord reported that the inhabitants of Lagos had still to "learn to avail themselves of the cheap and ready justice which our courts dispense".[2] But as the chart on the following page shows, there is no discernible increase in the amount of business conducted by the colony's courts between 1867 and 1892.[3] Even taking into consideration a slight decrease in the scale of fees charged in the courts, the resultant comparison of periods of the courts' history reveals that no new group of claimants began to make use of the

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1- While visiting the Police Magistrate Court, the editor of The Lagos Weekly Record mused over a suit in which "the evidence was as strong and conclusive on one side as it was on the other, though of course violently contradictory,... As it was, the dispenser of justice (the Police Magistrate) was quite nonplussed .. and he wisely sent the disputants away with a sort of non suit and without any one of them being the gainer". The Lagos Weekly Record, 5 July 1902.

2- Ord's Report, op. cit., 24-25

3- The chart has been divided into periods corresponding with the functioning of the Court of Civil and Criminal Justice and functioning of the Supreme Court with Lagos as part of the Gold Coast colony and independent. The chart ends at 1892 because the expansion of the court's jurisdiction to parts of Ijebu in that year and later makes any further comparison invalid.

FINES AND FEES IN THE LAGOS COURTS, 1867-1892 [1]

YEAR	FINES (£'s)	FEES (£'s)	TOTAL FINES AND FEES (£'s)
1867	330	527	857
1868	426	901	1,327
1869	508	962	1,497
1870	658	1,690	2,348
1871	890	1,148	2,038
1872	596	974	1,570
1873	337	1,143	1,480
1874	362	1,026	1,388
1875	327	743	1,070
1876	271	691	962
AVE p.a.	£ 470	£ 970	£1,340
1877			1,158
1878			1,621 ✱
1879			1,801
1880			1,241
1881			1,069
1882			1,100
1883			869
1884			1,044 ✱
1885			1,009 ✱
AVE. p.a.			£1,212
1886			822
1887			1,056
1888			820
1889			904
1890			935
1891	530	795	1,325
1892	167	863	1,031
AVE. p.a.			£ 985

1- Figures are from Blue Books for 1867-1892, CO 151/5-30 and are represented to the nearest £. The Blue Books give figures only for total fines and fees from 1877-1890.

✱- No figures were given for fines and fees in the Lagos District Commissioner Court for these years. The figures in this chart represent the fines and fees in the Lagos Divisional Court and and the District Commissioner Courts at Badagry and Leckie plus the average annual amount of fines and fees collected in the Lagos District Commissioner Court in the other six years of this period, 1877-1885.

courts during this period.[1]

In fact, the courts at times were hardly pressed to complete their scheduled business. In one six month period in 1872, the Court of Civil and Criminal Justice sat a total of only fourteen days, and in the first eight months of the following year sat only thirty-one days. The settlement's other courts were scarcely busier: the Court of Requests convened once a week and was able to dispose of its business in about three hours, while the Police Magistrate Court's daily work only occupied between two and three hours. Indeed, the business conducted by all three courts was insufficient to occupy the time of three Clerks of Court and it was thought practicable to amalgamate their duties into one office.[2] Almost twenty-five years later, it was commonplace for the judge of the Supreme Court to complete his work before 11 a.m. and for the Police Magistrate Court to finish its work even before that.[3]

1- In the Court of Civil and Criminal Justice, fees for summonses where the claim was less than £25 were 5s., where the claim did not exceed £10, and 8s.4d. above this amount. In the Supreme Court the corresponding charges were 5s. and 11s. Fees for claims above £25 were less in the Supreme Court until 1888, when they were increased and new categories were added to the table of fees. See, Blue Books for the Tables of Fees payable in the courts.

2- Fowler to Pope Hennessey, 12 Nov. 1873, CO 147/24; Lees to Berkeley, 16 Sept. 1873, in Berkeley to Kimberley, 30 Sept. 1873, CO 147/27.

3- McCallum to Bramston, 13 July 1897, attached to McCallum to Chamberlain, 18 Aug. 1897, CO 147/116. The title of the Lagos District Commissioner had been changed in 1895 to Police Magistrate, in order to emphasise the difference between his primarily judicial function as opposed to the political activities of the colony's other District Commissioners. Ordinance 8 of 9 Dec. 1895, CO 148/2.

Despite the slowness of business in the colony's courts, there was no attempt to bring the majority of Africans in Lagos within the scope of their activities. Legal representation in the courts was denied in cases involving illiterate parties, and although fees payable in the Supreme Court were reduced after 1876, for claims above £25, there was at the same time a slight increase in fees for minor claims. Moreover, minor legal disputes, the majority of which would have involved Africans, were further discouraged from appearing in the courts by judges themselves. In 1875, Chief Magistrate John Marshall set aside two days of each week in which to hear disputes in his chambers,[1] thereby encouraging informal arbitration outside of court in small, unimportant matters. And Chief Justice Smalman Smith was always quick to investigate any sudden increase in the number of actions being brought before the courts and put a stop to it. It was claimed that Smith was able to maintain control over spurious litigation in this way without impairing the legitimate plaintiff's access to the courts,[2] but the suspicion remains that some wheat was lost with the chaff.

Colonial courts were mainly for the use of commercial interests on the island. With an inadequate number of trained legal officers in the colony, it was not in the interests of the colony to urge the facilities of colonial courts on the African population. There was no lack of court actions involving European or African mercantile

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1- Strahan to Carnarvon, 16 Mar. 1876, and enclosures, CO 147/32.
2- The Lagos Weekly Record, 17 Dec. 1898.

establishments. At Lagos, where trade depended on credit between merchant and middleman, a decline in commercial conditions left creditors with recourse only to the courts. In 1880 - a not especially poor year for trade - the firm of Walsh Brothers were involved in twenty litigations, all but once appearing as plaintiffs. In that same year, even such small houses as E.E. Pittaluga and J.S. Leigh found themselves in court on eight occasions each; and over the two-year period 1880-81 Escherich and Company appeared twenty-one times in the courts as plaintiffs.[1] Considering that in the previous eight year period, 1867-1874, an average of just over sixty civil causes appeared annually in the Court of Civil and Criminal Justice, the overwhelming proportion of civil actions coming before the courts must have involved Lagos commercial houses.[2]

Africans, of course, still had their own customary tribunals in which most of their disputes were aired and settled. Bales and ward-chiefs continued to exercise their judicial prerogative in cases which fell within their jurisdiction. There was no attempt by the colonial authorities to interfere in these purely African matters, and although "native courts" were not formally recognised in Lagos until 1937, cases were settled by native authorities without interruption throughout the colonial period. In more important African matters, however, the customary judicial rights of native

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1- Schedule of Litigations, in Rowe to Kimberley, 13 Apr. 1882, CO 147/49.

2- A total of 505 civil causes were tried during that 8 year period. See, speech by C.H.H. Moseley of 21 January 1904, in The Lagos Standard, 27 Jan. 1904.

authorities were severely circumscribed. By the second article of the treaty of cession, Oba Dosunmu was only "permitted to decide disputes between natives of Lagos with their consent", and this "subject to appeal to British laws".[1] It seems unlikely that Dosunmu fully understood how limited his judicial powers would become under this article, for less than two months after the cession, Dosunmu and some of his chiefs objected to the jurisdiction of the newly established Debt Court. The court had brought decisions against some of his subjects and forced them to pay their debts in accordance with English law. He had not formerly objected to the imprisonment of a number of Sierra Leonean emigrants for debt, but it was feared "that he will take the first opportunity to resist the action of our law on his adherents".[2]

The acting Governor at the time, William McCoskry, claimed that at the signing of the cession treaty he had "promised that should his (the Oba's) own people ... agree to go by his decision he might settle disputes; as however it is only one generally who will agree, the other applies here, and I summon the first to appear."[3] McCoskry's account of what was promised at the signing of the treaty must be suspect; so must his later contention that it was generally only one of the Oba's subjects who would agree to abide by his decision. It appears very unlikely that after less than two months of British

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1- Article II of the Treaty of 6 August 1861. This treaty can be found in Burns, History of Nigeria, Appendix D.
2- McCoskry to Russell, 5 Oct. 1861, FO 84/1141.
3- Ibid.

rule the indigenous population would have preferred to bring their claims to newly established colonial courts instead of their own customary courts. Therefore, Dosunmu's objection must have been to the court's jurisdiction in a case that involved one of his subjects and a non-native of Lagos. Moreover, the fact that this objection was raised less than two months after the treaty was signed surely indicates either that Dosunmu did not fully understand the implications of the second article, or that McCoskry misrepresented it to him. In fact, it is not unlikely that McCoskry assured the Oba that he could decide all disputes involving his subjects and not simply those that occurred between them.

At any rate, the indigenous community did resist the implementation of colonial laws and court decisions. McCoskry found it impossible to get the Oba or his chiefs to comply with any of his measures or the dictates of the courts, and it was necessary to call in Commodore Edmonstone of the Bights division to have an interview with Dosunmu. Edmonstone, who along with McCoskry negotiated the treaty of cession, explained the objects of Great Britain "in wishing to put Lagos under British jurisdiction", and "urged him to assist in executing the laws as they would henceforth be administered". Edmonstone seems to have urged well, for after the interview Dosunmu was more co-operative and on several occasions "used his influence to cause the natives to submit to" British jurisdiction.[1]

1- McCoskry to Russell, 5 Nov. 1861, FO 84/1141.

Dosunmu's co-operation with the authorities proved to be sporadic and interference with the rulings of the courts and obstruction of justice in general continued. Constables were assaulted while performing their duties, and it was impossible to apprehend an important chief or headman without the use of troops. Dosunmu had given his word that none of his people would be exempt from attending citations to the courts and that no violence would be done to officers on duty; but he had no desire to aid colonial officials in these demands.[1] On one occasion, after a "White-Capped" chief had flogged two constables, troops were sent into the native section to arrest him. When he could not be found, Governor Freeman placed a fine of five days pension on the Oba for every day the chief remained at large. Soon afterwards he gave himself up.[2]

The judicial prerogative was not only an integral part of the Oba's power but a major source of revenue for him and his council as well; as such, it was only reluctantly surrendered. But this early confrontation between the native and colonial authorities was primarily political in nature. Once the uncertainties of the first few years of British rule had ended, and British jurisdiction had been established, there were no further conflicts. The colonial authorities willingly accepted the judicial roles of African chiefs in Lagos and even encouraged those in the districts. It was relatively inexpensive to allow African chiefs to retain control over

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1- McCoskry to Russell, 6 Jan. 1862, in FO to CO, 13 Feb. 1862, CO 147/2.
2- J.A. Lamb to the Africa Secretary, 8 Aug. 1862, CA 2/M5.

their people (a yearly stipend of £25-£50 sufficed in most cases) and convenient where there was no need to provide colonial courts for European commercial interests.

By the end of the 1870's, African tribunals outside of the island of Lagos were recognised by the colonial government. Their powers were regulated and a procedure for appeals to colonial courts from their decisions was provided.[1] At the time, it was not certain that formal recognition could be granted to "native courts" in the colony, as the Supreme Court Ordinance of 1876 had invested the Supreme Court with all of the Crown's jurisdiction; however, by having appeals lie to the Supreme Court, this legal difficulty was circumvented.[2]

Although the judicial prerogative in purely African matters remained with the indigenous authorities of Lagos, British rule had brought about new conditions on the island. By the 1880's, the Oba and his council were no longer a potent force in the affairs of the island. Throughout his lifetime, Dosunmu was able to retain much of the charisma that surrounds a royal personage; but his death in 1885 saw the complete eclipse of traditional authority in Lagos. The once powerful White-Capped and War chiefs of Lagos were humble journeymen: the Eletu Odibo and Onimole were fishermen and farmers; the

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1- The Gold Coast Native Jurisdiction Ordinance no.8 of 24 June 1878, CO 97/2. Lagos, it will be remembered, was part of the Gold Coast colony from 1874-1886.

2- It was only in 1887 that the Supreme Court ruled that native courts had not been prohibited by the Supreme Court Ordinance of 1876. See, Nwabueze, The Machinery of Justice in Nigeria, 46-48.

Olumagbon, the Eletu Ijebu and Ashesi were ordinary fishermen; the Ashagbon and the Saba were retired traders; Prince Tadeyo was also a fisherman; and Prince Ogunbambi was a clock and umbrella repairman.[1]

The Obaship as well suffered. Dosunmu's successor, Oyekan, was chosen by the government as Dosunmu had been chosen by Campbell over thirty years before; but Oyekan's "pension" was not the same as his predecessor's and was hardly sufficient to maintain the semblance of royal dignity, much less the entourage, expected of an Oba. Furthermore, it was decided that on Oyekan's death the government would not interfere in the selection of an Oba - the implication being that the colonial authorities no longer recognised the royalty of the House of Dosunmu and, indeed, regarded it as any other family on the island.[2]

Because of the decline in the influence of the Oba and his council, and perhaps in emulation of the British, judicial authority came increasingly to be exercised by individual, high-ranking members of the native community. Most prominent of these men was Ajasha, the Apena of Lagos, who as a member of the Oba's council had formerly performed the functions of judge and prosecutor when the council had sat in its judicial capacity.[3] In the years after the cession,

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1- See, Covenant between chiefs of Lagos and Denton, in Denton to Knutsford, 28 May 1891, CO 147/80.

2- The House of Dosunmu was resuscitated in the twentieth century and became a potent force in the politics of independence. See, Herbert Macaulay, Justitia Fiat, London 1921, and J.S. Coleman, Nigeria: Background to Nationalism, Berkeley and Los Angeles 1958.

3- The Apena was also the second of the two chief title-holders of the Ogboni Society. See, R.C. Abraham, Dictionary of Modern Yoruba, London 1958, 59.

Ajasha in company with other former native authorities called upon the indigenous population not to avail themselves of either the authority of the colonial government or their facilities, but to keep disputes within the native prerogative. As a result, it was to his court that most of the Africans of Lagos came to settle their differences, and by virtue of his judicial powers and the fines and fees which his court levied, the Apena by 1880 had become one of the most powerful Africans on the island.[1]

There were also other Africans in Lagos by the 1880's - Africans who were neither subjects of the Oba nor amenable to westernisation like the emigrant Sierra Leonean and Brazilian communities. The population of Lagos and its vicinity had increased by almost half in the decade after 1871, rising from 36,000 in that year to over 53,000 in 1881.[2] Various groups from the interior, dissatisfied with their lot in more conservative African societies or seeking their freedom under the auspices of the British flag, were attracted to Lagos by the commercial activity of the port. Some found less than what they expected and returned to the interior; but those who remained became a separate section of the Lagos community, whose interests were almost entirely devoted to commerce.[3]

As an alien group, they also remained largely outside the pur-

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1- The African Times, 1 Jan. 1876 and 2 Apr. 1877 (letter); Rowe to Derby, 30 June 1883, CO 96/150; Young to Derby, 4 Oct. 1884, and enclosures, CO 96/160.

2- Newbury, The Western Slave Coast, 80.

3- Between 1866 and 1881, the number of people employed in commerce more than doubled. See, ibid., 80-81.

view of the African authorities and were not inclined to frequent colonial courts. For the settlement of their disputes, they turned to whatever means of redress were available to them. At first, they brought their claims and complaints before the Apena, whose court, though expensive, presented the facade of authority sought by these recent immigrants. After a few years in Lagos, however, there emerged from this group successful merchants, notably D.C. Taiwo, who refused to patronise the Apena's court, and who in turn established their own informal courts to settle disputes involving their "followers".[1]

At the same time, less scrupulous people took advantage of the ignorance of the immigrants by representing themselves as government officials with extraordinary powers. One Sierra Leonean, N.T.B. Shepherd, established a court in his house at Itolo Offin, at the northwestern corner of the island. Shepherd had been a clerk to a Lagos solicitor, and after gaining some superficial legal knowledge in his employ, had spread the rumour that he was a lawyer in government service. His mock court even had "bailiffs" in attendance to lend atmosphere to its proceedings, and there was also a private gaol in his compound, where he imprisoned those who refused to abide by his judgements.[2]

This sudden birth of numerous make-shift courts led inevitably

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1- Memorandum by J. Crowther, 24 Sept. 1884, in Young to Derby, 4 Oct. 1884, CO 96/160.

2- Rowe to Kimberley, 13 Apr. 1882, and enclosures, CO 147/49; Rowe to Kimberley, 11 May 1882 and Watt to Rowe, 6 May, 1882, enclosed, CO 147/50; letter to The African Times, 1 Oct. 1881.

to antagonism between their "supporters" and those of the older, more established modes of justice on the island. The colonial authorities for their part were content to allow these clandestine courts to take some of the burden from their own understaffed judiciary. D.C. Taiwo's court, for example, was not restrained from operating when it came to the government's attention that he was exercising a quasi-legal jurisdiction. But when methods became fraudulent in particular courts, these were promptly proscribed. Shepherd, for instance, was brought to trial for fraud after litigants in his court complained to the Lagos authorities that they could not collect their money after his judgements.[1]

Although the British remained largely unconcerned with the activities of these courts, they did come into direct conflict with the Apena's court. In the fluid conditions of African society in Lagos, an increasing number of disputes of a personal and business kind involved members of the new immigrant community and the Oba's subjects. And where these were not settled by recourse to colonial courts, the right to adjudicate (and collect fees for this service) was the object of jealous competition.

Indirectly this resulted in a confrontation between Ajasha and Taiwo which threatened to erupt into civil war. Of humble origin, Ajasha, according to one informant, aspired to the Obaship of Lagos, and with the power and wealth gained from his judicial position, he

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1- Ibid.

attracted a large following among the Oba's subjects. Taiwo, on the other hand, was a chief of Isheri (north of Lagos in Egbado country) who was satisfied with conditions in Lagos and the semi-autonomy that he and his followers had. The differences between the two had long been growing and came to a head in 1883 when, with Taiwo's support, Oba Dosunmu deposed the Apena after a personal interview in the Iga (palace).

Ajasha was unprepared at the time to resist the forces of both Dosunmu and Taiwo, but later that year, in defiance of the Oba's authority, he entered the Ogboni hut and proceeded to cut open the ritual drums. Ajasha, who was no longer a member of the Ogboni after being deposed as Apena, hoped thereby to provoke the society to retaliation, which he could then use as excuse for open civil war. The Ogboni, however, were well advised and instead brought a civil suit against him in the Lagos District Court for damages of £8. Normally, violation of the Ogboni hut meant death to the perpetrator, but by bringing Ajasha's actions to the notice of the government, an outright struggle was avoided and Ajasha was indirectly disposed of anyway. The authorities, having their attention drawn to the seriousness of the situation, were forced to intervene, and after finding the former Apena guilty of provoking his opponents, deported him to the Gold Coast.[1]

As the incident recounted above shows, Africans did use colonial

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1- Rowe to Derby, 30 June 1883, CO 96/150; Young to Barrow, 28 Oct. 1884, in Young to Derby, 28 Oct. 1884, CO 96/160. See also, J.B. Losi, History of Lagos, London 1914, 23-24.

courts when it served their purpose. The situation was very much the same as that during the consular period, thirty years before. Then, each of the different groups on the island - the emigrants, the merchants and the indigenous peoples - had their own courts or means of adjusting disputes, and most matters that cut across communal divisions, were brought before the British consul. In the 1880's, of course, colonial authority was supreme on the island, and the courts were utilised even in matters of purely African concern. Indeed, customs evolved concerning the courts. Victorious suitors and their adherents would celebrate a court victory with song and dance in the streets, aimed at insulting the less fortunate parties to the action. Understandably, these displays were not always taken in good spirit by unsuccessful litigants, and once in 1885 it was necessary for the government to prohibit this public celebration in order to avert a clash between the supporters of two influential court contestants.

Colonial courts were not always so scrupulously used. Lagos society was divided not only along communal lines but also into factions within each group. Initially these divisions were determined by opposition to the British occupation of Lagos in 1861. The Oba's supporters combined with various dissident emigrant leaders in resisting the imposition of colonial rule and opposing British authority in general. During the administration of John Glover, the split into factions became more pronounced. Anxious to establish the authority of the fledgling colonial government, Glover

opposed any measure that lent prestige to the former native authorities, and although by the cession treaty Dosunmu was "allowed the use of the title of King",[1] Glover consistently addressed him as the "Ex-King" of Lagos.

As well, he promoted factionalism by his policies vis-a-vis the African states in the Lagos hinterland. His preoccupation with the trade routes in the interior, and his total lack of appreciation for the complexities of "Yoruba" politics, forced him into policies that accentuated the already existing differences amongst the emigrant community. Because of his belligerent attitude towards the Egba and Ijebu, emigrants of Egba or Ijebu extrations, like J.P. L. Davies and J.A. Payne, formed an opposition to him, while those of Oyo birth, like the Willoughby family or Charles Foresythe, became the "Governor's men".[2]

In time, these opposing camps became involved in the internal politics of the indigenous population, the Egba-Ijebu group supporting the Apena and encouraging his designs, and the emigrants of Oyo birth backing the Oba and Taiwo. Because many of the emigrants were employed in the courts, cases that involved supporters of either faction were rarely free from irregularities. Court interpreters lent colour to their interpretations according to whether the party concerned was an Ajasha or Taiwo man. Malicious prosecutions were in-

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1- By article II of the treaty of 6 Aug. 1861.
2- The split of emigrants into factional loyalties along lines approximating the interior wars and trade patterns is discussed in Kopytoff, A Preface to Modern Nigeria, 193-97.

itiated, primarily by the court Registrar, J.A. Payne, who once even had a writ illegally served on a Taiwo partisan who was a subject of Ikorodu and, therefore, beyond the jurisdiction of the Lagos courts. It was also Payne who was accused of conspiring to ruin Taiwo by manufacturing evidence against him in a civil action that was later proved to have been maliciously inspired.[1] One Taiwo supporter had, over a two month period, been brought before the Lagos Police Magistrate on three separate occasions and fined £5 each time. His offences had been represented to the Police Magistrate by Payne and J.S. Cole, an emigrant of Egba birth, and some Lagos constables. The last offence involved the burying of a child in a prohibited area, and after a more thorough investigation revealed that the charge could not be substantiated, the previous decision was reversed and the constable who aided Payne and Cole dismissed.[2]

Overall, then, it can be seen that for a variety of reasons, Africans did not readily avail themselves of the services of colonial courts. The colonial authorities were quite willing to allow them to settle their differences without recourse to their perpetually undermanned facilities, and throughout the colonial period African courts functioned. African merchants, of course, used the courts in the course of their commercial enterprise - J.S. Leigh, for example, was an African - and the courts were used by Africans

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1- Testimony of Apatira of 24 Sept. 1884, testimony of Odutomi of 23 Sept. 1884, Smith to Barrow, 26 Aug. 1884, and evidence of Kasumu of 9 Nov. 1884, in Young to Derby, 31 Dec. 1884, CO 96/161.

2- Willoughby to Glover, 7 Feb. 1873, G.P.

in the course of their factional disputes. But by and large, Africans did not come willingly within the pale of colonial jurisdiction, and the authorities, for their part, were content to allow them to remain outside.

CHAPTER V

The Law and its Application

Because most of the case law of present-day Nigeria developed after 1900, the rules of law handed down by the Supreme Court and the Privy Council are of limited use in determining what the law was during this earlier period. This chapter can, therefore, only briefly and tentatively describe the law that was considered to be in force at the time. More relevant to the scope of this thesis is the law as applied by the colony's courts or the colonial government. It is one of the contentions of this chapter that the law as administered in the courts bore little relation to the law alleged to be in force in the colony, that District Commissioners and judges alike administered the law on an ad hoc basis, paying scant attention to the legal principles involved or the rulings of higher courts. It is further contended that in applying the law relating to slavery, debt and land, the colonial authorities were primarily influenced by political and economic considerations rather than the correct legal position.

Throughout most of its independent existence, the law of the colony was derived from three sources: English law, customary law and colonial legislation. By ordinance 3 of 1863, English law was introduced into the settlement in the following terms:

> All Laws and Statutes which were in force within the realm of England, on 1 January 1863, not being inconsistent with any Ordinance in force in this Colony ... shall be deemed and taken to be in force in this Colony, and shall be applied in the administration of justice, so far as local circumstances will permit. 1

In 1876, the extent to which English law was applicable in Lagos was re-defined as:

> The Common Law, the doctrines of Equity, and the Statutes of general application which were in force in England at the date when the Colony obtained a local Legislature, that is to say, on the 24th day of July, 1874, shall be in force within the jurisdiction of the Court. 2

In all matters coming before the court, "Law and Equity" were to be administered concurrently, and in any matter in which there was conflict between the rules of Equity and the rules of the Common Law, "the rules of Equity shall prevail".[3] As for the application of Imperial Laws, those

> declared to extend or apply to the Colony or the jurisdiction of the Court shall be in force so far only as the limits of the local jurisdiction and local circumstances permit, and subject to any existing or future Ordinances of the Colonial Legislature. 4

Customary law, on the other hand, did not become part of the law of Lagos until 1876. Colonel Ord had earlier suggested before the Parliamentary Select Committee of 1865 that some form of "modified native law" should be administered by the settlement's courts,

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1- Section 1 of ordinance 3 of 4 Mar. 1863, CO 148/1.
2- Section 14 of the Supreme Court Ordinance of 1876, in Stallard and Richards, Ordinances of the Colony of Lagos.
3- Section 18 of ibid.
4- Section 17 of ibid.

but it was not until Lagos became part of the Gold Coast Colony that such provision was made.[1] By the Supreme Court Ordinance of 1876, customary law "not being repugnant to natural justice, equity and good conscience", nor incompatible with the laws of the colony, was to be observed and enforced by the court in matters where the parties involved were natives of the colony. This was particularly urged on the court in actions relating to marriage, to tenure and transfer of real and personal property, and to inheritance.

Furthermore, in matters between natives of the colony and Europeans, customary law would be applied if it appeared to the court "that substantial injustice would be done to either party by a strict adherence to the rules of English law". Where it appeared, however, that it had been agreed that a transaction, and the obligations arising from it, were to be regulated by English law, no claims could be made to customary law. Lastly, in cases where no express English or customary law rule was applicable to the matter in controversy, "the Court shall be governed by the principles of justice, equity, and good conscience".[2]

In addition to English and customary law, there was throughout a body of colonial legislation consisting of ordinances passed by the legislative council and rules and orders made under their pro-

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1- See, q.8657 of the Report of the Parliamentary Select Committee of 1865, op.cit. On the Gold Coast itself, provision for observing local customary law had been in force since the Order in Council of 3 Sept. 1844 made under the auspices of two Imperial Acts, 6 Vict. C. 13 and 6 & 7 Vict. c. 94, See, Redwar, Comments, 61-62.

2- Section 19 of the Supreme Court Ordinance of 1876.

visions. The effectiveness of colonial ordinances, however, was somewhat qualified by the Colonial Laws Validity Act of 1865 (28 & 29 Vict. c. 63) which provided that an Act of Parliament extended to a colony when the provisions of the act made it applicable by "necessary intendment" to the colony. All colonial laws repugnant to such acts were void and inoperative; but colonial ordinances repugnant to the laws of England in general, and not to a specific act entending to the colony, were not void for this repugnancy.[1]

These, in brief, were the sources of the law in force in the Lagos colony. Laws, however, have no meaning until they are defined judicially. This process of definition is sometimes achieved in accordance with the arbitrary will of individuals and need not have any internal consistency. More often, however, a system of "case law" evolves that lends a high degree of certainty to the import of legislation. This is the system that has evolved in most countries, and particularly in England, and it was the system that was "received" in the Lagos colony.[2] Unfortunately, case law was relatively undeveloped in Lagos during the period under discussion, and the effect of local legislation, as regards the law in force in the colony, is, therefore, almost impossible to define. There is, for example, no meaningful definition of the phrase "all Laws and Statutes which were in force within the realm of England". It certainly

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1- Sections 1, 2 and 3.

2- Reception is the phenomenon whereby the laws of one country are introduced into the legal system of another. See, A.N. Allott, Essays in African Law, London 1960, 4; and Park, The Sources of Nigerian Law, 15.

could not have been the intention in 1863 to apply all public and private acts and laws in force in England to the new settlement, and no judicial ruling was made at the time, defining the extent to which laws in force in England were also in force in the settlement.

This ambiguity is also found in the wording of the Supreme Court Ordinance of 1876, which re-defined the extent to which English law would apply in the Gold Coast Colony. Although both "the common law" and "the doctrines of equity" are well-defined case law systems, the meaning of the term "Statutes of general application" is - even at this date - "not susceptible of exact definition".[1] Moreover, it is still a matter of debate whether the date limiting the reception of these statutes to those in force in England on 24 July 1874 did as well apply to the common law and doctrines of equity.[2] Still further,the application of Imperial Laws in the colony was qualified by the proviso "so far only as the limits of the local jurisdiction and local circumstances permit". But this phrase, too, has not been satisfactorily defined by the courts, and there is no certainty as to its meaning.[3]

1- Elias, The Nigerian Legal System, 18.

2- This is the view taken by Professor Allott in A.N. Allott, "The Authority of English Decisions in Colonial Courts", Journal of African Law, I, 1, 1957, 23-39; also Allott, Essays, 31-33. The opposing view, that is, that the common law and the doctrines of equity for the time being in force in England were in force in Lagos can be found in Park, Sources, 20-24. Dr. Elias affects a neat compromise between both positions by arguing that some rules of common law and equity made after the limiting date would be applicable, if the principle involved had been expounded before then. See, Elias, British Colonial Law, 35-36.

3- See, for example, the contrasting views in Park, Sources, 19,and Allott, Essays, 21-22.

As for customary law, it has proved equally difficult to determine what laws are applicable and the situations in which they may be applied. The phrase, "repugnant to natural justice, equity, and good conscience", has only been defined as meaning "barbarous", without any further elaboration. Early in the twentieth century, it was argued that although "natural justice" and "good conscience" were undefinable, equity referred to the English laws of equity. The phrase, therefore, was taken to mean repugnant to the laws of equity. But this interpretation never became current.[1] As well, the application of a particular customary law to a case seems always to have been a matter for the court's discretion. Unlike the rules contained in the common law and the doctrines of equity, a customary law had first to be proved to the court's satisfaction before it would be applied. Expert witnesses testified in court, but the judge alone determined whether a customary law did, in fact, exist. The criteria for judging a customary law valid are vague, and it was once possible for a Full Court to hold that only customary laws dating from a "time whereof the memory of man runneth not to the contrary" were applicable.[2] This decision was not followed in later cases.

In the same vein, it was just as difficult for judges to decide

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1- This was the interpretation of Puisne Judge E.A. Speed, but at the time it was overruled. See, Park, Sources, 70.

2- This date was fixed at 1189 A.D., in keeping with the English law concept of immemorial custom. See, the decision of Bailey, J., in Welbeck v. Brown, which can be found in Redwar, Comments, 211.

which of two putative customary laws applied in the case before them. The expert witnesses called to give evidence before the court were as often divided as not on what was the customary law pertaining to a particular matter. As they usually represented the interests of their "clients", such evidence did not help to facilitate the court's business. It was also provided in the Supreme Court Ordinance of 1876 that where no express rule, either English or customary law, could be found applicable to a matter in controversy, the court was to be governed by "the principles of justice, equity and good conscience". In this context, this phrase has been interpreted to mean that the court could only decide whether to apply English or customary law to the matter, for "it was not intended to give the courts an absolute discretion to impose in any case whatever solution they thought fit".[1] But this view has not received general acceptance, and, in fact, throughout the nineteenth century the phrase was interpreted as "the case must be decided according to the principles of natural justice",[2] whatever they might have been.

During the nineteenth century, therefore, there was little certainty as regards the extent to which English or customary law was in force in the colony. In practice, this meant that jurists had a considerable leeway in interpreting the law applicable to a

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1- Park, Sources, 100.
2- See, for example, Elias, The Nigerian Legal System, 17, and Nwabueze, The Machinery of Justice in Nigeria, 20-21; quote from Redwar, Comments, 65.

matter before them. Most of the enactments extending English law to the colony allowed for verbal alterations or a restricted application because of local circumstances, and as judges had always the duty to do substantial justice without undue regard to technicalities, cases must often have been decided on their merits alone.

Some attempt was made at the end of the century to eliminate much of the vagueness of the criminal law. In 1898, it was proposed to enact a Criminal Code for Lagos along the lines of a similar code passed earlier in the decade on the Gold Coast. The code was designed primarily to facilitate the administration of justice in the lower courts and was to be comprehensive enough to allow even a layman to perform well in a judicial capacity. All crimes and punishments would be clearly set forth in the enactment, and henceforward the criminal law of the colony would be administered with reference to the code alone.[1]

Until the following year, however, nothing was done to implement the proposal. By then, opposition from all sections of the African community, and the Lagos bar, had been marshalled against the provisions of the code, citing two main objections to it. The first was that the code dispensed with a magistrate's option to impose a fine in lieu of imprisonment for many classes of crimes. The second was that its provisions tended to subvert native customs and laws that were not repugnant to natural justice, equity or good con-

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1- McCallum to Chamberlain, 29 Jan. 1898, and enclosures, CO 147/129.

science.[1] It was this second objection that came to the heart of the problem. At Lagos, English and customary law were administered concurrently in the courts, and it had been the duty of magistrates and judges to inquire not only into the facts of a case, but into the customs which bore upon it as well. Since the island consisted of a mixture of pagan, Christian and Muslim Africans, the ascertainment of the appropriate customary law presented very real obstacles to the administration of justice. It was to overcome these obstacles by standardising the criminal law in force in the colony that the code was originally proposed.

The strength of the objections to the code was sufficient to deter the government from enacting it. But even the authorities had not been wholly satisfied that an all-encompassing Criminal Code was the answer for Lagos. Although this left the criminal law of the colony in a somewhat confused and anomalous state, it had long been recognised that a strict application of English law was futile and perhaps damaging as well. A broad and elastic view of the law, rather than a technical and restricted one, was necessary in the circumstances of the colony, as hard and fast rules were seldom applicable. In the opinion of one of the framers of the Supreme Court Ordinance of 1876, the best that could be aimed at was

> to provide the courts with ... some simple rules as to the particular systems or principles of jurisprudence

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1- Petition of 29 Mar. 1899, in Denton to Chamberlain, 14 Apr. 1899, CO 147/142.

> which they are to apply in the different classes of cases coming before them. [1]

And twenty years later, a Governor of Lagos still thought it imperative for judges "to look at questions and decide them from a common sense rather than from a strictly legal standpoint".[2] Overall, then, it was a flexible approach to the application of laws that characterised this period in the administration of justice.

The law of the colony also comprised ordinances passed by the legislative council. For the most part, this legislation dealt with problems of a specific and local nature. As such, they are only marginally part of the wider concept of the colony's "Law", for they were enacted with specific purposes in mind and usually remained in force only for a short time. Laws are, however, a value-neutral technique of carrying out policies; therefore, by examining laws passed by legislative councils and their implementation by the government, official policies can be more fully discerned. In the remainder of this chapter, it is intended to show how colonial legislation reflected official attitudes towards Lagos and how they in turn influenced the application of the law as regards the problems of slavery, debt and land.

In the first decade or so of colonial rule, local legislation was designed primarily to improve the island's facilities for European inhabitation and commerce. Ordinances were passed empowering

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1- Minute by Fairfield, 6 Nov. 1874, on Strahan to Carnarvon, 27 Sept. 1874, CO 96/112.
2- Carter to Ripon, 10 Dec. 1894, CO 147/96.

the government to construct roads and thoroughfares and to widen existing streets; laws were also enacted requiring land-owners to fill in swamp-land; and a "Public Health Ordinance" enforced street cleaning and other sanitary measures.[1]

While these laws were necessary to ensure the health of the island's population and to prevent the spread of fire to all parts of the town, their provisions did fall heavily on the indigenous people. In deference to a petition submitted by European merchants in 1862, an ordinance was enacted making it illegal to roof houses and dwellings with the highly inflammable "country thatch" commonly used by the island's inhabitants. Henceforth a less inflammable material made of bamboo had to be used in its place, and failure to comply with this provision could be penalised with a fine of £50 or three months imprisonment.[2] The roofing required by the ordinance was an expense not easily afforded by Lagos residents, but the ordinance was allowed to remain in force until it was found impossible to provide sufficient quantities of bamboo for the island's needs.[3]

Similarly, an ordinance to compel land-owners to fill in swamp areas on their land did not take account of the burden this would place on the majority of Lagos land-owners. This ordinance, however, was not allowed to remain in force, as even the Colonial Office realised that it would fall "with undue severity on owners of swamp

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1- Ordinances of Lagos can be found in CO 148/1-3; for the years Lagos was part of the Gold Coast colony, they can be found in CO 97/2-3.

2- Petition of 18 Dec. 1862, in Glover to Newcastle, 9 Nov. 1863, CO 147/4; ordinance 8 of 9 Apr. 1863, CO 148/1.

3- Petition of 9 Nov. 1863, in Glover to Newcastle, 9 Nov. 1863, CO 147/4; ordinance 2 of 7 Jan. 1865, CO 148/1.

land, who being poor people, may really be without the means of effecting what the Ordinance requires of them!"[1]

Early legislation was also designed to regulate public sales on the island. Ordinances were passed licensing public auctioneers and requiring them to post securities of as much as £400; others required persons selling spirits to obtain either a wholesale or retail license costing £50 and £25 respectively; and still others provided for the licensing of hawkers and pedlars at a nominal fee.[2] Although these ordinances were enacted to provide a source of revenue for the settlement and some safeguards against defective merchandise, they proved to be a source of "great annoyance" to petty traders and in some cases impeded the growth of trade with the inland states. After less than a year, therefore, the ordinances requiring licenses for the sale of spirits and for hawking and peddling were repealed.[3] In the following year, however, an ordinance again provided for the licensing of retailers of spirits, but in order not to obstruct trade with the palm rich states on the mainland, wholesalers were allowed to ply their trade unlicensed.[4]

As the years passed, the emphasis of colonial legislation came noticeably to favour European commercial interests. While it was to

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1- Ordinance 19 of 28 Oct. 1863, CO 148/1; CO to Freeman, 30 Dec. 1863, CO 147/4.
2- See, for example, ordinance 7 of 9 Apr. 1863, ordinance 15 of 18 Sept. 1863, and ordinance 14 of 8 Sept. 1863, CO 148/1.
3- Ordinance 3 of 26 Feb. 1864 and ordinance 4 of 26 Feb. 1864, CO 148/1.
4- Ordinance 13 of 5 Dec. 1865, CO 148/1.

a large degree true that the overall interests of the colony did not often conflict with those of the European trading community, there were instances when they did. In such cases, petitions, from the various Chambers of Commerce in England were not lightly disregarded, and though it cannot be said that the major interests of the colony were sacrificed for those of the Lancashire cotton merchants, their views held considerable weight and were generally heeded by the colonial authorities.

The adulteration of palm-kernels, for example, was a direct threat to the reputation of the colony's produce and by the end of the 1880's, its widespread practice had resulted in a lowering of the price offered for Lagos kernels in European markets.[1] Adulteration of produce was not a new phenomenon by then; indeed, the government's attention had been called to it on three different occasions in the preceding decade, and in 1875 a notice had been published cautioning against this practice. At the time, the Governor had maintained that the laws of the colony pertaining to fraud were sufficient for this purpose, and on this basis the colony's courts had found against adulterators.[2]

But it had become increasingly difficult for the courts to return verdicts against producers on the charge that palm-kernels had been intentionally soaked. The practice was to keep kernels at the

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1- Thomson to the Colonial Secretary, 15 Sept. 1888, in Moloney to Knutsford, 27 Feb. 1889, CO 147/69.
2- Minutes on Trade Meeting held 26 Sept. 1888, in ibid.

bottom of a partially filled canoe for a few days, or to allow them to soak for some time in the lagoon itself. Both methods increased their weight substantially, and since they were purchased by weight, intentional soaking was of course fraudulent. However, unless the adulterator was caught in the act, fraud was practically impossible to prove, as kernels were usually transported by canoe from the interior and were bound to become wet en route. For both the courts and the purchasers of palm-kernels, the colony's laws were, therefore, inadequate.

An attempt to define adulteration of produce and legislate against it specifically was made in 1889. In February of that year, an ordinance was enacted making it a criminal offence not only to adulterate produce but even to sell kernels without first taking reasonable precautions against their being soaked.[1] At the time, the Colonial Office had some reservations about the ordinance, fearing that it could lead to victimisation of some who had no intention of committing fraud, but it was not disallowed and it came into force in March 1889.[2]

In the year that followed, almost thirty convictions were made under the provisions of the ordinance, but there was little falling off in complaints against adulteration. In fact, almost all convictions came from the district of Badagry,[3] indicating possibly

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1- Ordinance 1 of 14 Feb. 1889, CO 148/2.
2- Minute by Wingfield, 9 Apr. 1889, on Moloney to Knutsford, 27 Feb. 1889, CO 147/69.
3- Return of Prosecutions, in Moloney to Knutsford, 24 Apr. 1890, CO 147/74.

that enforcement was more strict there, but more likely that the Colonial Office's reservations had not been wholly without grounds. Indeed, the acting Governor of Lagos, G.C. Denton, practically admitted that victimisation was taking place. The new law placed the burden of proof on the accused, requiring him to show that adulteration had not been caused by fraudulent means. But as he pointed out, the class of people who brought produce to the markets were not of sufficient education to defend themselves unless they employed a lawyer. Although Denton could consider this a virtue, as it "would involve considerable expense and would be quite sufficient to deter the person prosecuted from running such a risk a second time",[1] this meant that innocent traders could be successfully prosecuted or could defend themselves only at great expense.

Perhaps because of the inherent injustices in the law, very few prosecutions were carried out after 1890. But it was also true that a strict enforcement of the ordinance would have damaged Lagos' relations with palm-kernel producers in the interior. Moreover, competition amongst the larger commercial houses was too keen to allow for any meaningful or concerted action on their part. The complaint of most Lagos merchants and some English Chambers of Commerce was not so much that the law was inadequate, but that the law made it incumbent upon the merchants themselves to instigate prosecutions against violators, and this action could lead to suspension of a

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1- Denton to Ripon, 8 July 1893, CO 147/90; Denton to Ripon, 12 Oct. 1893, CO 147/91.

vigilant merchant's supplies from the interior. Since most houses advanced credit to middlemen or producers, it might also have resulted in large losses should merchants refuse to accept the produce offered - adulterated or not.[1] The dilemma was common to all mercantile establishments in Lagos; all were in favour of regulating the quality of produce coming to Lagos, but none were willing to jeopardise their supplies. Therefore, adulteration of produce continued almost unchecked, despite legislation against this practice.

A similar partiality towards the interests of European commercial houses can be seen in the regulation of the sale of manufactured goods to Africans in the interior. In 1888, an ordinance amended the law relating to the labelling and marking of imported merchandise. Like the "Adulteration of Produce" ordinance, it was an offence to represent merchandise falsely by - in this case - inaccurate labels or markings, or to sell falsely marked merchandise without first having taken precautions against this.[2] There was not, however, any vigorous enforcement of this law, since buyers of manufactured goods were mainly people from the interior, who were either ignorant of the law or in no position to complain or both.

Other rather sharp practices were also current at this time. Pieces of wood, for instance, would often be inserted in large bundles of satin cloth, increasing the overall weight of the cloth

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1- Carter to Ripon, 7 Dec. 1893, CO 147/91.
2- Ordinance 8 of 6 Nov. 1888, CO 148/2.

by as much as two pounds. As this cloth was purchased by weight and not length, the pieces of wood in the bundle had the same effect as the soaking of palm-kernels, and perhaps influenced the continuation of that practice;[1] but again no special treatment was thought necessary to ensure that reasonable standards were maintained.

By far the most urgent problem along these lines was the sale of woven cloth to African traders in the interior. Until the 1890's, it had been customary for woven goods to be folded in lengths of thirty-six inches before being boxed. Africans were thus able to judge the amount of cloth purchased by counting the number of folds in each box, on the assumption that each fold represented two yards of material. But the lean years after the separation of Lagos from the Gold Coast brought with them the sharp practices that often accompany declining profit margins; and woven goods came increasingly to be folded in shorter lengths. Unsuspecting Africans were still purchasing boxed cloth thinking the folds represented the true length, and they were rudely shocked when they found this was no longer the case. By 1893, complaints from over-charged Africans threatened to disrupt the now recovered trade of the colony, and the colonial authorities, therefore, deemed it necessary to intervene.[2]

Legislation in this case was not difficult to devise, nor

1- Letter in The African Times, 1 Sept. 1890
2- Carter to Ripon, 17 Jan. 1893, CO 147/89.

would policing present any cause for resentment; and unlike the adulteration of produce, attempted fraud could easily be proved. At the beginning of 1893, an ordinance was passed making it illegal to import any woven goods after the first of February in folds of less than thirty-six inches. In addition, the total number of yards and inches had to be marked on the outside of the container in an easily seen position. As for goods already in the colony, an extra year would be allowed for their disposal, but then no further merchandise could be sold without conforming to the ordinance's specifications.[1]

The regulation of woven goods affected not only merchants in the colony but large cotton exporters in England as well. It was this latter group especially who felt the weight of the new law, as none of their stock on hand met with its requirements. Their objections to the law - voiced through their respective Chambers of Commerce - could not be overlooked by the Colonial Office, who at any rate were not without sympathy for their predicament. Primarily these objections were to the length of time allowed by the ordinance before imported goods had to be folded and marked according to the new procedure, and they suggested the time limit be extended to 1 June 1893 to allow for the shipment of their stocks. This was agreed to by the Colonial Office, and an amendment was passed in March postponing the deadline for the importation of goods

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1- Ordinance 2 of 17 Jan. 1893, CO 148/2.

for five months.[1]

Even with this extension, it proved impossible - or so it was claimed - to dispose of stock in England or Lagos, and a later amendment extended the time limit for the importation of goods to October 1893 and for the sale of these goods in the colony to the 31st December 1894.[2] But again, these extensions were regarded as insufficient, and the provisions of the ordinance were kept in abeyance until April 1894. A new ordinance was then enacted which again lengthened the time limit for the importation of goods to July 1 of that year, and allowed their sale in Lagos for yet another year.[3] From January 1893, therefore, exporters in England and wholesalers in Lagos were granted three time extensions in which to dispose of their stocksunder conditions that were admitted to be damaging to the colony's interests and were not far removed from being fraudulent. Seventeen months in all elapsed before the laws requiring woven goods to be accurately folded and marked became effective.

The commercial interests of the colony also dictated the lacklustre enforcement of the laws against slavery. Slavery in any form had been abolished throughout the British colonies by the Act 3 & 4 W. IV. c. 73. s. 12 explained by the Act 6 & 7 Vict. C. 98. s. 2.

1- Liverpool Chamber of Commerce to Ripon, 5 Apr. 1893, and Manchester Chamber of Commerce to Ripon, 15 Mar. 1893, CO 147/92; CO to the Officer Administering the Government, 26 Apr. 1893, CO 147/92; ordinance 3 of 28 Mar. 1893, CO 148/2.
2- Ordinance 5 of 30 June 1893, CO 148/2.
3- Ordinance 4 of 6 Apr. 1894, CO 148/2.

In Lagos, however, slavery existed at the time of the British occupation in 1861 and continued to exist, though in an attenuated form, until the end of the nineteenth century. Part of the difficulty in coming to terms with the problem was the three-sided nature of slavery at Lagos: there was the institution of domestic slavery on the island; the slave-trade, both in and around Lagos; and runaway slaves from African states in the interior. Because of the delicate political situation in Lagos and the tenuous relationship between Lagos and her palm-producing neighbours on the mainland, administration of the anti-slavery laws was not viewed as practicable. Though applicable to the colony, anti-slavery laws were incompatible with the overall interests of the colony and they were not, therefore, strictly enforced by the authorities.

During the decade preceding the British occupation of Lagos, the existence of domestic slavery had largely been ignored by British consuls. It was only in 1861 that some steps were taken to register slaves of emigrants who claimed British protection, with a view towards their manumission at a later date. Lagos was not then a British possession, and slavery could, therefore, be tolerated; after the cession, however, the problem could no longer be ignored. The Secretary of State for Colonies at the time, the Duke of Newcastle, had in fact objected to taking possession of Lagos because of the prevalence of slavery amongst the population, and it was realised that unlike the Gold Coast, where there was no territorial sovereignty beyond the walls of the forts, "Lagos would form an ex-

ception in this respect", and the British government would be brought into immediate contact with this institution.[1]

To justify a continuation of the policy of non-interference with domestic slavery on the island, a rather spurious argument was put forth by the chief clerk at the Colonial Office, Sir George Barrow. The treaty ceding Lagos to the Crown, he wrote, provided "that the inhabitants of the Island and Territories as the Queen's Subjects and under Her Sovereignty, Crown and Jurisdiction and government will be still suffered to live there". The people of Lagos were, therefore, to continue to abide there as the Queen's subjects. But this declaration, Barrow argued,

> is clearly not sufficient to constitute them British subjects. It was only a few years since that it was discovered that the whole body of Liberated Africans at Sierra Leone were not British Subjects and an Imperial act was required and passed to make them so.

He further contended that the people of Lagos had a King and chiefs over them and though they might have recourse to British authority "when it suits their purposes, they have their customs and prejudices to which they naturally cling" - one of these being domestic slavery, which "is so deep rooted and universal as to be incapable of being eradicated within any reasonable time". "It seemed unavoidable", concluded Barrow, but "that the British government must make the best of this evil as they may be able."[2]

1- Memorandum by Barrow, 10 July 1862, CO 147/1.
2- Ibid. The Liberated African Act of 1853, 16 & 17 Vict. c. 86. This Act can be found in C.W. Newbury, British Policy Towards West Africa, Oxford 1965, 564-66.

Barrow's sophistry, however, was unacceptable to Sir Frederick Rogers, who pointed out that slavery in all forms had been "unequivocally" abolished throughout Her Majesty's dominions. But realising the possible consequences of taking such a determined stand, the Colonial Office instead requested Governor Freeman to inform them what measures were being taken in Lagos to end domestic slavery there.[1]

For their part, the Lagos government had given no thought to the problem. In June 1862, the former Oba, Kosoko, and his followers had been allowed by the authorities to return to Lagos under very stringent conditions; but Freeman had not included any condition respecting the practice of slavery amongst Kosoko's people - an oversight for which the Colonial Office took him to task.[2] Freeman did, however, see the problem in its true perspective. There were two classes of domestic slaves in Lagos, those "appertaining to the soil and the slaves brought from the interior". In his view,

> the slaves of the soil are, of course, better off being in their own country, and their servitude is more like serfdom than slavery - and I scarcely think any legislation would make an immediate change in their lot, having been born and grown up with fixed ideas which are not easily eradicated. [3]

As for slaves from the interior, Freeman thought they would work hard for their liberty if given the chance; but as to the mode of compensating owners, he could offer no advice.

1- Newcastle to Freeman, 23 July 1862, and note by Rogers on the draft, CO 147/1.
2- Newcastle to Freeman, 21 Aug. 1862, CO 147/1.
3-Freeman to Newcastle, 9 Oct. 1862, CO 147/1.

> Many of these (slaves from the interior) are held by people who have no other right to them than that of the kidnapper. Hundreds are runaway slaves from Whydah, Porto Novo, Abbeokuta and Epe who have been seized again here by Docemo or his chiefs. Still an immense number have been purchased in fair market, and were the legal property of their purchasers before Lagos was ceded to the British Crown. To take them away therefore without some sort of compensation would appear an act of impolicy as well as injustice.

Freeman could see three possible solutions: slaves might be apprenticed without prejudicing the interests of their owners; the existof domestic slavery could be ignored, except when a slave sought protection; or thirdly, slaves could be emancipated by edict, in which case, however, he "could not answer for the safety of the town without a very much increased military force."[1]

The Colonial Office were in general agreed that gradual manumission by apprenticing slaves was best in the circumstances, but as Rogers noted, this could "only be carried into effect illegally or under a new act of Parliament". The Parliamentary Under-Secretary of State, Chichester Fortescue, had two novel suggestions: suspend the laws of Parliament pertaining to slavery in Lagos while implementing Freeman's first proposal; or transform Lagos into a protectorate, retaining only forts, factories and useful grounds as British territory. The Duke of Newcastle, somewhat confused, decided against any immediate decision and referred the matter for Foreign Office scrutiny.[2]

1- Ibid.
2- Minutes by Rogers, 20 Nov. 1862, Fortescue, 28 Nov. 1862 and Newcastle, n.d., on ibid.

One year later, the Foreign Office had still not answered;[1] by then, however, an ordinance had been passed in Lagos providing for the registration of all slaves in the settlement. If within three months of its enactment, a slave was not registered with the colonial authorities, he would be considered free, without any compensation being paid to his owner. In addition, the ordinance required all Sierra Leonean and Brazilian slave-holders to apprentice their slaves in accordance with the dictates of the Slave Court or lose all their rights over them.[2]

In practical terms, the ordinance was well suited to the situation at Lagos, but by identifying the British government with slavery, the Colonial Office had no choice but to disallow it. Fortescue thought it strange that "the Lagos authorities should legislate with such infantine (sic) simplicity and call Slavery 'Slavery'", but Rogers felt "no doubt that the proper course was to legislate in the direction indicated". A more comprehensive measure was then impracticable, for "any step which brought into light the fact that slaves are under no obligation to obey their owners would be probably in the nature of a social revolution". But he as well saw the paradox of the situation.

> So long as labor is worthless, slavery will be light. In proportion as slave labor becomes productive of profit, it will be grindingly exacted. Is there not,

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1- Minute by Newcastle, 10 Nov. 1863, on ibid.
2- Ordinance 20 of 28 Oct. 1863, CO 148/1. The Slave Court could decide the length of time slaves would be apprenticed, after which they would be free to seek other employment.

> therefore,considerable fear lest by encouraging legitimate commerce we may turn serfdom, with its loose intermittent obligations, into that unrelenting, methodized slavery which is inflicted by a master, who sees his way to making a profit on every hour of his slave's labor.

For Rogers, this was "strong ground for pressing manumission as vigorously as is practicable without manifest imprudence, in order to anticipate the period when the growth in civilization will intensify" the lot of slaves.[1]

Rogers therefore suggested that although the ordinance could not be allowed to remain in force, a new law should be enacted by the local legislative council which would give the effect of this ordinance while avoiding the legal objections to it. Such an ordinance, however, would inherently have to recognise the institution of slavery in Lagos and would therefore have to be sanctioned by Parliament before it could come into force. This meant, however, that Parliament would have to sanction a system of virtual, though modified, slavery and "impose such a system on a population, who, though unconsciously, have in Law acquired the rights of freemen".

Because such a bill would have compromised the government's anti-slavery policy in the eyes of its opponents, the Colonial Office, now under Edward Cardwell, were reluctant to proceed on this tack. Instead it was decided "to rely on the practical judgement and careful management of the local authorities" to deal with the problem. At the same time, it was also recommended that with the

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1- Minutes by Fortescue, n.d., and Rogers, 14 Dec. 1863, on Glover to Newcastle, 10 Nov. 1863, CO 147/4.

exceptions of the island of Lagos and the towns of Badagry and Palma, all other territory ceded by Dosunmu should be "embraced in a Protectorate", in order to limit the contact of the British government with domestic slavery.[1]

With the Lagos government apprised of the Colonial Office's dilemma, legislation was carefully worded to enable the authorities to deal with slavery without express mention of its existence on British soil. The ordinance that established the Slave Commission Court in November 1864,[2] discreetly avoided any reference to slavery in Lagos; the court was allegedly intended to compensate only owners of slaves who had escaped to Lagos. The court did of course have jurisdiction over disputes involving Lagos slaves, but Lieutenant-Governor Glover assured London that appeals to the court had in the past been extremely rare, and he intended in the future to circumscribe the jurisdiction of the court "and eventually to cease to take cognizance of any cases but such as arise from entrance into the Settlement of persons from adjacent countries". With these assurances, the Colonial Office allowed Glover to continue to employ the court, though within the limits of not recognising domestic slavery in Lagos nor using British authority to enforce it.[3]

This anomalous situation was brought to the attention of the Parliamentary Select Committee of 1865, who deplored the continuing

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1- CO to the Law Officers of the Crown, 13 Feb. 1864, Law Officers of the Crown to CO, 20 Feb. 1864, CO to FO, 23 May 1864, CO 147/7.
2- Ordinance 13 of 28 Oct. 1864.
3- Glover to Cardwell, 27 Dec. 1864, CO 147/6; minute by Cardwell, 18 Feb. 1865, on ibid.

association of Britain with domestic slavery and resolved that it could no longer be tolerated in the parts of Lagos regarded as British soil.[1] The import of the resolution was fully understood at the Colonial Office; all slaves in Lagos had to be freed or British territory there restricted to a similar extent as that on the Gold Coast. Still the Colonial Office was reluctant to adopt either measure; the two ordinances under which the Slave Commission Court had operated, which were at variance with English law, were formally disallowed, but as before the method by which the problem would finally be resolved was left to the discretion of the local authorities.[2] In effect, this was the exact course taken earlier which had led to the Parliamentary Select Committee's resolution.

The Colonial Office's determination not to force the issue was reinforced by their new Governor-in-Chief's estimation of slavery in and around Lagos. "The country" - he wrote in March 1866 -

> does not offer any difficulty on the question of slavery. It is sparsely inhabited and the people fully understand they are free. The people of Lagos, who by degrees no doubt will settle within these boundaries, are also free and know that slavery is not allowed within British rule, and I feel confident if the prudent course adopted by Lieutenant-Governor Glover regarding the lands and people be continued for a few years longer it will have a great moral effect upon the surrounding tribes." [3]

Knowing full well that Governor Blackall had very little first-hand

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1- Resolution 7 of the Report of the Parliamentary Select Committee of 1865, op.cit.

2- The two ordinances were, the Slave Registration Ordinance of 1863 and the Slave Commission Court Ordinance of 1864. Memorandum by Forster, 2 Feb. 1866, CO 147/11; CO to Blackall, 23 Feb. 1866, CO 420/2.

3- Blackall to CO, 6 Mar. 1866, CO 147/11.

experience of the situation at Lagos - he was there for less than two weeks - and that his observations revealed an extraordinary ignorance of the settlement's geography and the extent of slavery there, the Colonial Office eagerly accepted his report - a report that conflicted with almost all others on the subject including Colonel Ord's.[1]

Nothing was therefore done to put an immediate end to slavery in Lagos. By law, of course, its obligations could not be enforced by the government, and the official attitude was that all appearances to the contrary the institution did not exist in the colony. The official position, however, bore little relation to the actual situation in Lagos. Apologists for this discrepancy continued to insist that it was "well known" that any slave brought to Lagos was free the moment he entered the colony, and that slaves resident in the colony could receive police protection, if they were forced to continue in this capacity against their wishes.[2] But even if it is accepted that the legal rights of slaves were "well known", there were doubtless some who remained ignorant of them and others who, through force of circumstance, found themselves in no position to exercise these rights.

The colonial authorities could not have been unaware of these possibilities. In 1877, for example, a check by the civil police of every household on the island of Lagos revealed over one-hundred

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1- Minute by Forster, 11 Apr. 1866, on ibid. See, Ord's Report, op. cit.

2- See, for example, Lees to Freeling, 12 June 1877, in Freeling to Carnarvon, 20 July 1877, CO 147/33.

slaves in the possession of Lagosians, none of whom appreciated their status under the British.[1] As a result, some attempt was made to eliminate the loopholes that allowed for such blatant disregard of the law. The relationship between master and servant, notably, was regulated. All contracts for employment of over six months had henceforth to be in writing, and if illiterates were signatories to a contract, it had to be marked in the presence of a District Commissioner or a Justice of the Peace. The nature of the service, the place in which it was to be performed and the wages to be paid had all to be enumerated in the contract; and only apprenticeship contracts could be valid for a period of time exceeding two years.[2]

To some extent, these regulations curbed what was largely domestic slavery in the guise of domestic service; over the eight year period, 1878-1885, almost two-hundred offenders against this ordinance were successfully prosecuted.[3] But there is good reason to doubt the overall vigour with which the laws against slavery were generally enforced by the government. When the hundred or so slaves were discovered by police in 1877, no charges were brought against their owners. The slaves were merely registered with the authorities, apprised of their rights as British subjects, and then returned to the households in which they had been found.[4] Without an edict pro-

1- The African Times, 2 Oct. 1882.
2- Ordinance 16 of 23 July 1877, CO 97/2.
3- See, Blue Books for 1878-1885, CO 151/16-23, "Criminal Statistics".
4- The African Times, 2 Oct. 1882. Registration of slaves was, of course, illegal after the Slave Registration Ordinance had been disallowed in 1866.

claiming the abolition of slavery or a strict enforcement of anti-slavery laws, domestic slavery continued to thrive on the island. Despite the Acts of Parliament abolishing its status in the colonies, economic and social conditions in Lagos dictated a lax enforcement of anti-slavery laws, and only the technological changes of the twentieth century brought the institution to an end.

Apart from domestic slavery, slave-dealing, though on a limited scale, continued to flourish both in and around Lagos. By the 1870's, the trade in slaves had changed its character, becoming more clandestine, and now involved mainly young boys and girls. The usual practice at this time was for a dealer to purchase children at places beyond the colony's jurisdiction and bring them to the island as his relatives. At an opportune moment, the children would be conveyed to Porto Novo or disposed of in Lagos itself, where they would remain as household slaves. This was not merely a matter of a few children either; as one case in the Supreme Court revealed, the accused "kept in Lagos a regular slave mart", and he was not an isolated or exceptional case. In the judge's opinion, "the traffic (in young slaves) was very extensively carried on."[1]

Unlike domestic slavery, slave-dealing was not tolerated in any form by the Lagos authorities. Those proved to have engaged in the trade were arrested and prosecuted in the courts. But the ill-defined position of domestic slavery in the colony made it difficult for

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1- Woodcock to Moloney, 13 Nov. 1878, in Moloney to Lees, 15 Nov. 1878, CO 147/36. The widespread practice of buying and selling young girls and boys is also mentioned in a letter from J.H. Willoughby to Bishop Crowther, 20 Jan, 1873, G.P.

Administrators to determine just what slave-dealing comprised. Those who only bought slaves could not be easily dealt with, for if prosecutions were brought against purchasers of slaves, those who redeemed friends and relatives in the interior would have been equally liable. On the other hand, if the criterion for slave-dealing was to include all who possessed slaves in Lagos, the difficulty of separating new owners from old ones was bound to be insuperable. At best, therefore, only the bringing of slaves to Lagos could be regulated.

As the traffic in slaves consisted largely of children, it was proposed in 1877 that all aliens under twenty-one years old brought into the colony be registered. They would then be allowed to be removed only with the permission of the colonial authorities. Failing this, a charge of slave-dealing could be brought against offenders, and punishment meted out under provisions of the slave-dealing laws.[1] The proposal was adopted later in the year, but in a much watered-down version. In order to eliminate any risk of disrupting commercial intercourse between Lagos and the interior, the Colonial Office preferred to limit the age of those covered by the measure to seventeen, and suggested less severe penalties in place of those normally given for slave-dealing.[2]

Accordingly, the subsequent Alien Children's Ordinance was lim-

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1- Lees to Freeling, 2 June 1877, in Freeling to Carnarvon, 20 July 1877, CO 147/33. A similar situation at Sierra Leone in the 1850's prompted the passage of a law for the protection of alien children, which also required their registration with the colonial authorities. See, Crooks, History of Sierra Leone, 190.

2- CO to Freeling, 7 Sept. 1877, CO 147/33.

ited in application to minors under seventeen years old. The ordinance provided that all "alien children" brought within the geographical limits established for this ordinance had to be registered within forty-eight hours of their arrival, and no change could be made in their custody without bringing this to the attention of the authorities. It was also provided that registered alien children could not be removed from the area defined in the ordinance without the Governor's written approval.[1]

In the first seven months of the ordinance's operation, over seven hundred and fifty alien children were registered in Lagos and almost six hundred in Badagry,[2] attesting to the wide currency in young slaves in the colony. Some dissatisfaction, however, was expressed by the African community at Lagos who feared most of all that the compulsory registration of alien children would deter visitors and traders from coming to Lagos.[3] But there was little to fear on this point. Very few visitors or traders must have been bothered, as the Lagos government was careful to avoid interfering with the normal traffic from the mainland to Lagos and vice versa. Indeed, they were quite judicious in prosecuting even those who violated the law. For instance, charges were not brought against a Lagosian who bought a child in the interior, and after bringing her to Lagos and

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1- Ordinance 18 of 19 Dec. 1877, CO 97/2. The application of this ordinance was limited to the islands of Lagos and Iddo, the towns of Badagry, Palma and Leckie and some two miles of the mainland north and northwest of Lagos, including Ebute Metta.

2- Woodcock to Moloney, 13 Nov. 1878, and Returns in Moloney to Lees, 15 Nov. 1878, CO 147/36.

3- Petition from Lagos chiefs and elders, in Dumaresq to Freeling, 4 Feb. 1878, CO 147/35.

registering her in accordance with the ordinance, took her beyond the colony's jurisdiction without first obtaining written permission from the Governor. Although liable for prosecution, Administrator Moloney was reluctant to proceed against the man, who it seems acted in good faith, for fear of compromising any further redemptions of slaves from owners in the interior.[1]

As it happened, so much care was taken by the authorities not to interfere with normal conditions that the aims of the ordinance were lost sight of from the start. Slave-dealing in children was as widespread after the measure as before, and while the trade was not carried on under the immediate eye of the government, the Lagos authorities seem to have considered the enactment of the ordinance and not its enforcement sufficient. The law, after more than four years in operation, was - in one opinion - "a sham". Slaves were constantly brought to Lagos and registered as relatives from the interior, and then sent either to Porto Novo or back to the mainland by simple subterfuges. Those children who had no knowledge of the Yoruba language were first sent to a nearby town for them to learn the language so they could pass as relatives.[2] Furthermore, the requirement to register alien children in no way put an end to their being purchased in the interior as slaves and used as such in Lagos, though under the guise of "domestic servants". The Master-Servant

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1- Moloney to Griffith, 31 Dec. 1880, and enclosures, CO 147/44; minute by Hemming, 14 Feb. 1881, on ibid.
2- Letter to The Lagos Times, 28 June 1882; letter to The African Times, 2 Oct. 1882.

Ordinance, in fact, specifically allowed a child between nine and sixteen years of age to be "apprenticed" for up to five years in positions of domestic service.[1]

The results of these anti-slave measures were paradoxical; instead of containing the spread of domestic slavery and creating obstacles to the continuation of the trade in children, these enactments were an impetus to both. Whereas formerly those who brought children back from the interior were regarded with suspicion and probably watched as likely slave-dealers, now the registration of these children with the authorities was sufficient to place their owners beyond the reach of the law. Even more important, since the Alien Children's Ordinance had practically made legal the importation of young slaves, their appearance in Lagos could hardly be questioned, and as long as they did not remain there longer than forty-eight hours, or have custody over them changed, their owners had the legal right to leave the colony with them. How much this added to the slave traffic between the mainland and Porto Novo can perhaps be imagined, with the island of Lagos now acting as a convenient stop-over on the way.[2] This is not to say that the Lagos authorities intended to create better conditions in which slavery could flourish; but by failing to enforce measures against slave-dealing, because of the possible consequences to the colony's trade, the government unwittingly provided just these conditions.

1- Section 19, Ordinance 16 of 23 July 1877, CO 97/2.
2- This is implied in a letter to The Lagos Times, 26 July 1882.

More difficult to solve than the problems of domestic slavery or slave-dealing was that of runaway slaves. By English law, a slave was free the moment he reached British territory and the colonial authorities could not legally support an owner's claim and order his return. Lagos, however, was surrounded by African states which recognised a slave-owner's rights to an escaped slave and, in their view, the non-rendition of slaves was akin to robbery. The complications that arose because of these different legal concepts presented a constant threat to the economic well-being of the colony.

Since trade depended on the importation of palm-oil and -kernels - almost entirely the product of slave-labour - there was a two-fold danger in attempting to enforce the English law. In the first place relations with the palm-producing areas on the mainland would have deteriorated if runaway slaves found an easily accessible asylum in Lagos; and secondly, any mass exodus of slaves from these areas would have hindered agricultural production, and depressed the flow of trade to Lagos. As the protectorate expanded towards the end of the century, it was the fear of the latter that prompted the authorities to re-examine their policy towards runaway slaves and eventually determined their support of the obligations of slavery in the African states of Yorubaland.

From the early years of the settlement, the problem of runaway slaves was a point of contention between Lagos and the surrounding states, in particular, Porto Novo and Abeokuta. Both states objected to Lagos becoming a refuge for their slaves whenever they felt mis-

treated, and this had been exacerbated by the establishment of a liberated African yard almost immediately after the cession.[1] Although a Slave Court was established in 1862 to provide for compensation to owners whose slaves had escaped to Lagos, the amount awarded always took into consideration the time slaves had served their masters. Moreover, in order to receive compensation, an owner had to present evidence before the court, which was held in Lagos, of his right of possession, and of the time of purchase and the amount paid - impossible requirements in most cases.[2]

It was the arrangements for compensating owners of runaway slaves that were a major complaint of the Egba when the acting Governor of Lagos visited Abeokuta in May 1863. Although the "humanitarian" policy of Britain in West Africa was explained to the Bashorun, it is unlikely that he was over impressed or sympathetic.[3] Indeed, the moral protestations of the Lagos government or the British were bound to arouse a certain amount of suspicion while slavery continued to exist on British soil. The problem became even more pregnant with the expansion of the settlement in 1863 to Badagry in the west and Palma and Leckie in the east. In order to limit the settlement's contacts with runaway slaves, it was suggested by the Colonial Office that only the island of Lagos and the towns of Badagry and Palma be considered British soil and all intervening areas regarded

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1- McCoskry to Russell, 3 Sept. 1861, in FO to CO, 16 Oct. 1861, CO 147/2.
2- Glover to Didelot, 3 Aug. 1863, in Glover to Newcastle, 8 Aug. 1863, CO 147/4.
3- Mulliner to Newcastle, 22 May 1863, CO 147/3.

as protectorate. In this way, jurisdiction over runaway slaves entering the protectorate would remain the prerogative of the protected chiefs; however, it was admitted that some form of compensation could not be avoided in the settlement itself, "especially when the slave owner enjoys French protection", as many did at Porto Novo.[1]

Although the basis of most complaints was the amount of compensation paid to owners, something at least was being done to accommodate Africans on this account. After 1866, however, the Slave Court ceased to function, and compensation for runaway slaves was, therefore, discontinued. At the same time, there was an increase in the number of slaves who were enticed away from their masters in the interior or abducted and then brought to Lagos, where there were no legal sanctions against the perpetrators. The position of the Lagos authorities was clearly untenable. As one Administrator pointed out: "we demand redress from the natives for any breach of our laws, while obliged to confess our inability to make any concession to them under similar circumstances". To remedy this in part, he suggested that "in a clearly proved case of abduction at the very least there should be the power of enforcing the payment of a money compensation, even if it is not considered advisable to treat the matter as a criminal offence."[2] But British policy dictated that all slaves who reached British soil became free, and nothing could officially be

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1- Minute by Fortescue, 19 Sept. 1863, on Glover to Newcastle, 8 Aug. 1863, CO 147/4.

2- Berkeley to Pope Hennessey, 24 Jan. 1873, in Pope Hennessey to Kimberley, 6 Feb. 1873, CO 147/27.

done to compromise this position.

While John Glover was Administrator of Lagos, the colonial government's policy followed closely the official line from London: Lagos continued to be an asylum for all runaway slaves. After Glover left, however, this policy was somewhat reversed by the local authorities. Trade with the Lagos hinterland had deteriorated in the last years of Glover's administration, and in 1872 - the year Glover was relieved - the roads through Ijebu and Egbaland were closed to Lagos trade. One of the major grievances of both the Egba and Ijebu was the constant abduction of their slaves by people of Lagos and the high loss of wives and slaves, who sought refuge in Lagos upon the slightest pretext.[1] In an attempt to appease the African states in the interior and to re-open the trade routes, Glover's replacement, Henry Fowler, and the Governor-in-Chief, John Pope Hennessey, softened the official policy towards runaway slaves. No overt action could be taken, but the Oba was made an agent of the Lagos government, with instructions to prevent his people from enticing slaves away from their masters at the various markets around Lagos, and to station canoes in the lagoon in order to turn back runaways before they reached the island.[2]

For the first time in the settlement's history slaves were being returned to the Egba and Ijebu with the Lagos government's tacit

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1- The Alake of Abeokuta and others to Pope Hennessey, 15 May 1872, in Pope Hennessey to Kimberley, 15 June 1872, CO 147/23. See also the minutes of the legislative council of 12 Feb. 1872, CO 149/1.
2- Willoughby to Glover, 15 Oct. 1872, G.P.; Lees to Berkeley, 26 Sept. 1873, and enclosures, CO 147/28.

approval. In one instance, two female slaves were taken from the court house in Tinubu Square, where they had come for protection, carried in broad daylight down Victoria Street to the Oba's palace, and then sent by canoe to Ebute Metta, where they were returned to their owners.[1] When the husband of one of the slaves proceeded to complain to the acting Administrator, Fowler accused him of spreading malicious rumours and had him gaoled for over six weeks allegedly for "safekeeping until witnesses could be brought down from the interior."[2] Fowler was later censured by the Colonial Office for allowing these events and for granting the Oba authority to turn back canoes with runaway slaves. By December of 1872, he had been removed from office, and three months later, Pope Hennessey was gone as well.[3]

Although the rendition of slaves was condemned at this time and throughout the colony's history, some modification of policy was made in the 1880's. The island of Lagos and the towns of Badagry, Palma and Leckie still remained sanctuaries for runaway slaves; but away from these places, where there were no European traders and few missionaries, the government's position became far more conciliatory. Relations between Lagos and Africans on the mainland had always been strained by the protection Lagos afforded runaway slaves, and in all fairness to the inland states, there must have been numerous instances

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1- Glover to Kimberley, 30 Oct. 1872, and enclosures, CO 147/26.
2- Doorly to Berkeley, 6 Jan. 1873, in Berkeley to Pope Hennessey, 4 Feb. 1873, CO 147/27.
3- CO to Keate, 5 Apr. 1873, CO 147/27. Fowler was replaced in December 1872 by George Berkeley. See, Blue Book for 1872, CO 151/10.

of slaves committing crimes and then escaping to Lagos. No extradition treaties existed between Lagos and the African states on the mainland, and therefore slaves who committed criminal acts could not be returned for punishment. In these circumstances, the colonial authorities were twice condemned for not returning them.

The Lagos government realised the justness of African complaints on this point and were also not unaware of the many inconveniences of their rigid policy. Runaway slaves were still not returned to their masters; but the authorities did begin to reprimand those who induced such defections.[1] Colonial officials also began actively to prevent runaway slaves from reaching places within the colony's jurisdiction. Once, two slaves had escaped on board the government vessel, "Gertrude", lying in the eastern waters. Although they were marked by brutality, the officer in charge of the expedition ordered them removed to the shore, where their owner stood waiting. Some weeks afterwards, this attitude was endorsed by the Governor, who ordered that in future the officer in charge of government vessels had first to grant permission before any visitor or stranger would be allowed on board.[2]

The problem of runaway slaves and that of slavery in general became more accute towards the end of the century, as the boundaries of Lagos expanded north into the interior. In the protectorate, that is, those parts of Lagos not considered British territory,

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1- See, for example, Evans to Granville, 8 Sept. 1886, and enclosures, CO 147/57.
2- The Lagos Observer, 18 May 1882.

slavery was a widespread institution that had been recognised by the colonial authorities from the start. In 1900, however, Governor William Macgregor suggested a definite time limit be placed on its continued existence. According to Macgregor, this could be accomplished by issuing a decree which specified a date after which no child could be born into slavery. To this the Colonial Office had no objections; but only so long as it would not provoke any serious repercussions in the protectorate.[1]

In July of that year, a public notice announced that the "legal" status of slavery would no longer be recognised in the protectorate; henceforth, no government employees, nor the Lagos courts, would enforce the rights and obligations arising from this relationship, although government officers could still lend their services to compose differences between slaves and owners as regards their liberation and compensation.[2] The abolition of the legal status of slavery did not of course put an end to slavery itself; but it did prevent owners from using colonial officials and courts to enforce their rights over slaves. Outright abolition in the protectorate was not thought expedient at the time, but so long as no new slaves could be born, the problem was limited.

This was not the case in the areas north of the protected territories which were included in the Lagos Protectorate Order in Council

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1- Macgregor to Chamberlain, 10 Feb. 1900, CO 147/148; minute by Antrobus, 4 Apr. 1900, on ibid.
2- Public Notice of 27 July 1900, in Denton to Chamberlain, 28 July 1900, CO 147/150.

of 1901. Throughout the period under discussion, slavery was legally recognised in those areas and its obligations enforced by the colonial authorities. The considerations which allowed the Colonial Office to approve and even support this situation were the very practical ones of commerce and control. After the defeat of Ijebu Ode in 1892, Governor Carter found it necessary to take precautions against any mass exodus of Ijebu slaves to the newly ceded portions of the colony along the northern shore of the lagoon. The officer in charge of the para-military force stationed at the capital, Ode, was, in fact, instructed "not to encourage the escape of domestic slaves", for fear of upsetting the economic life of this palm-rich state.[1] Furthermore, no commitment to end domestic slavery was later included in the treaties negotiated with Abeokuta, or the states of Yorubaland - Oyo, Ibadan, Ife. It was clearly the case that neither the Colonial Office nor the Lagos Government intended to interfere with the institution in these areas, even if it did become the harsh, exacting kind found earlier in the Americas. Cynically, Governor Carter wrote in 1896: "I suppose some regard must be paid to the rights of property even in West Africa."[2]

The experience with Ijebu Ode had taught the British not to

1- Aderibigbe, Expansion of the Lagos Protectorate, 283.
2- Quoted in McCallum to Chamberlain, 20 Dec. 1897, CO 147/121. An interesting article that discusses the relationship of slave to free labour in Lagos at this time is A.C. Hopkins, "The Lagos Strike of 1897: An Exploration in Nigerian Labour History", Past and Present, 35, Dec. 1966, 133-55.

provoke radical changes unless they were willing to bear the cost of maintaining order and prepared to accept a decline in palm-oil production. Many wealthy Ijebu chiefs had been ruined after the British occupation, and even without encouraging desertion, many domestic slaves still escaped to British soil.[1] Neither a decline in palm-produce from the interior, nor the ruin of indigenous authority, served British interests. It followed, therefore, that British policy towards slavery - although never very consistent - was inclined to be one of non-interference by the end of the century,[2] and even one of support in certain circumstances. Carter actually rendered assistance to slave-owners in recovering runaway slaves who had not reached British soil; and in 1898, acting Governor Denton could suggest that no publicity be given to the acquisition of jurisdiction in the railway strip through Egbaland, and no flags be hoisted there, in order to avoid any large scale desertion of Egba slaves to what had now become British soil.[3] The previous year had seen the British Resident at Ibadan compel the Owa of Ilesha to return three slaves who had run away from their owner in Ibadan, and during that same year, a supplementary convention concluded with Oyo act-

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1- Aderibigbe, Expansion of the Lagos Protectorate, 284. Palm-kernel exports in 1894 amounted to over 53,500 tons; in the following four years, they declined to 46,500, 47,600, 41,200 and in 1898 to 42,700. Palm-oil exports also dropped from 12,700 tons in 1895 to 6,200 tons in 1898. See, Newbury, The Western Slave Coast, Appendix III.

2- See, minute by Grindle, 16Feb. 1898, on McCallum to Chamberlain, 20 Dec. 1897, CO 147/121.

3- McCallum to Chamberlain, 20 Dec. 1897, CO 147/121; Denton to Chamberlain, 14 Sept. 1898, CO 147/135.

ually recognised domestic slavery as an established institution throughout Yorubaland.[1]

Some guidelines were obviously necessary for dealing with slavery in the areas coming under British control. In 1897, Governor McCallum proposed three tentative principles as regards domestic slavery: the first, that slaves cruelly treated be set free after an inquiry by British officers, and then sent to British territory without any compensation to their owners; the second, that owners be obligated to manumit any slave who could pay compensation equal to his recognised value; and the third, that disputes between inhabitants of the same state involving slaves be settled by native authorities according to customary law, British officers interfering only in cases of flagrant injustice.[2] The problem of runaway slaves, however, did not admit of such easy answers. Those who escaped to Lagos would of course be free; but in the case of a slave escaping to another African state, McCallum suggested that compensation be paid to the owner or the slave returned, if necessary with the assistance of British officers. By doing so, it was thought, reprisals could be avoided.[3]

McCallum's proposals were not entirely to the Colonial Office's

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1- McCallum to Chamberlain, 12 Jan. 1898, CO 147/129; minute by Grindle, 16 Feb. 1898, on McCallum to Chamberlain, 20 Dec. 1897, CO 147/121. The supplementary convention with Oyo is mentioned in Grindle's minute, but I have been unable to locate it.
2- McCallum to Chamberlain, 20 Dec. 1897, CO 147/121.
3- Ibid.

satisfaction. The Secretary of State, Joseph Chamberlain, refused outright to permit British officers to take active steps in restoring runaway slaves to their owners, though he agreed to their participation in settling compensation. The remainder of McCallum's principles were approved, but without much enthusiasm; under the existing circumstances which required the recognition of slavery they were as good a solution as any.[1]

Despite official approval of these guidelines, it may fairly be questioned how far they were followed by colonial officers at Lagos. It was less than a year later that the Resident at Ibadan compelled the Owa of Ilesha to return some runaway slaves; and in general the government had little sympathy with the principles involved. As they saw it, the people of Yorubaland were quite willing and capable of surviving off the land, and if the obligations of slavery were relaxed, grave consequences were bound to follow. Agriculture would suffer heavily because of the railroad moving north and paying labour 9d. per diem, while domestic slaves received in food and subsistence only 4d. In a free labour market, therefore, native producers would find themselves without sufficient labour, and commercial prospects would not be very bright for the colony.[2] Thus, domestic slavery had to be recognised in Yorubaland, and its obligations enforced by the colonial authorities.

1- CO minutes on ibid.; CO to McCallum, 23 March 1897, CO 147/121.
2- Denton to Chmmberlain, 3 Aug. 1898, CO 147/134. See also, Hopkins, "The Lagos Strike of 1897", op.cit. 144.

In dealing with the various aspects of slavery, the Lagos authorities displayed at times a total disregard for legal prescriptions; in certain cases, their actions were clearly in violation of Imperial laws on the subject. To a lesser degree, this was also true of their treatment of debt in the colony. Because of the system of trade that prevailed at Lagos, and the keen competition for it, debt was a recurrent problem throughout much of this period. Large mercantile establishments, anxious to secure as great a share as possible of the palm-oil and -kernel market, extended liberal credits to their suppliers, and when economic conditions in Europe declined or the trade-routes to the interior were closed, debts mounted. In these economic conditions, the laws of debt were enforced largely in accordance with the wishes of European interests, and despite the trend in England after 1869 away from imprisonment for debt, in Lagos debtors were still being imprisoned in large numbers after the turn of the century.

The problem of debt in Lagos was somewhat more complicated than that of slavery, inasmuch as there was some confusion as to the applicability of the English law on the subject. Before 1876, the law of debt in Lagos was based on the common law as of 1 January 1863,[1] and under these rules, debtors could be imprisoned. In 1869, however, Parliament passed two acts - a Bankruptcy Act and a Debtors'

1- This was by virtue of ordinance 1 of 1863 which extended the laws of England in force on 1 January 1863 to the settlement.

Act - which virtually abolished imprisonment for debt in England;[1] and by the Supreme Court Ordinance of 1876, the laws in force in England as of 24 July 1874 were applied to the Gold Coast Colony. In drafting the Supreme Court Ordinance of 1876, however, the Colonial Office expressly mentioned that the laws of bankruptcy in force in England would not be extended to the colony, and it was with this in mind that the Gold Coast Full Court ruled in 1881 that the acts of 1869 were not applicable.[2] Despite this early decision, it was later held that the two acts did in fact apply to all British possessions by "necessary intendment", but it was also held that the Supreme Court of Lagos had no bankruptcy jurisdiction and therefore could not act as auxiliary to the English Bankruptcy Court.[3] In short, this meant that although the Bankruptcy and Debtors' Acts of 1869 did apply in Lagos, they could not be enforced. To add to this confusion, it should also be pointed out that two of the constitutions of the early Lagos Chief Magistrate Courts had empowered the court to be a Court of Bankruptcy, "with full power and authority to adjudicate all matters thereto".[4]

With the law in such a confused state, the treatment of debtors at Lagos varied considerably from year to year. In the 1860's, the problem was mainly confined to providing safeguards against debtors

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1- The Bankruptcy and Debtors' Acts of 1869, 32 & 33 Vict. c. 71 and 32 & 33 Vict. c. 62.

2- See, minute by Fairfield, 12 Jan. 1875, on Strahan to Carnarvon, 27 Sept. 1874, CO 96/112. Halliday v. Alapatira (1881) 1 N.L.R. 1

3- Callender, Sykes & Company v. Colonial Secretary of Lagos and Davies (1891). This decision is mentioned in Redwar, Comments, 9.

4- Ordinance 1 of 9 Feb. 1864, Section 7, and ordinance 9 of 6 July 1864, Section 7, CO 148/1. This jurisdiction was confirmed by ordinance 5 of 5 June 1865, CO 148/1.

absconding from the settlement. An ordinance was framed in 1866 to "enable creditors to seize the property of absconding debtors" - a measure necessitated by want of agreements with nearby African states for their rendition.[1] The provisions of the ordinance permitted a creditor to have the property of a debtor seized if the debt could not be collected or if service of a summons to appear in court could not be affected. In court, the claim would be examined, and if found justified, the property would be auctioned off and the proceeds applied towards repayment of the debt. This ordinance was not immediately approved by the Colonial Office who were not prepared to allow Lagos creditors such wide, discretionary powers. Sir Frederick Rogers thought that the Chief Magistrate should have the right to refuse a writ of seizure should be doubt the creditor's affidavit. As well, creditors should be required to furnish prima facie evidence that the debt was real, that the debtor had been informed of this account and had been applied to for payment, and that the debtor was avoiding payment. With the inclusion of Rogers' suggestions, the ordinance was passed into law by the legislative council.[2]

The Absconding Debtors" ordinance of 1866 helped only to tighten-up the laws relating to non-resident debtors and those who absconded from the settlement. It did not, however, deal with the problem of debt itself - a problem which the poor trading conditions of the

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1- Ordinace 5 of 17 Mar. 1866, CO 148/1.
2- CO to Blackall, 31 May 1866, CO 147/11; ordinance 6 of 4 Oct. 1866, CO 148/1.

late 1860's and early 1870's considerably magnified. Until then, there had been few instances of traders over-extending themselves to the point where creditors had had to resort to legal action; in fact, only two debtors had been imprisoned before 1869.[1] But with the growth of competition amongst merchants and the overall difficulties in maintaining good trading conditions, the number of debtors imprisoned increased sharply. In 1869, forty-nine found themselves confined in the Lagos gaol, and the following year their numbers reached two hundred and eighteen - a figure that testifies to the total breakdown of the economic system at Lagos when the roads were closed. From then until 1875, the number of debtors imprisoned averaged just over sixty a year.[2]

The growth of imprisonment for debt in Lagos at this time was clearly contrary to the movement away from this in England which culminated in the Bankruptcy and Debtors' Acts of 1869. But as was often the case, laws that were thought suitable for England were not thought practicable for the West African coast. As one Gold Coast jurist put it: "the (Debtors') Act (of 1869) presupposes a condition of society where the property possessed by individuals is known or at least can be ascertained". In his opinion, this condition could not be met on the Gold Coast or Lagos by "English Courts of Justice with the comparatively limited means of discovery at their disposal".

1- One was imprisoned in 1865, the other in 1866. See, Blue Books for 1865-66, "Gaol Statistics", CO 151/3-4.
2- Blue Books for 1869-74, "Gaol Statistics", CO 151/7-12.

In accordance with African ideas about debt, a debtor's family would pay his debt if he were imprisoned. Therefore - he concluded - "imprisonment is the most tangible method by which the English Courts can vindicate the fulfillment of obligations, as well as being the only one which would not ... be a failure."[1]

Although the Secretary of State in 1870, Lord Kimberley, would have preferred the abolition of imprisonment for small debts altogether, he was initially reluctant to interfere with local legislation. The Court of Requests established in that year, was empowered to imprison debtors who owed up to £20 for terms not exceeding twelve months.[2] Confinement for debts of over £20 had no legally imposed limit, but as the prisoner was maintained in gaol at the expense of his creditors, long-term confinements were rare. Of the more than four hundred debtors imprisoned up to 1874, only ten remained in gaol longer than one year.[3]

But this power was not thought sufficient by the Lagos authorities; imprisonment acted in full satisfaction of a debt, and it was argued that small African traders held little fear of the loss of personal freedom for such a short period. As their confinement was also unattended by any hardship or forced labour, the deterrent value of imprisonment was proving negligible.[4] Still, when it was proposed to allow the court to order imprisonment for all debtors until the debt was repaid in full, the Colonial Office would not comply.

1- Chalmers to Berkeley, 29 June 1874, in Berkeley to Carnarvon, 3 July 1874, CO 96/112.
2- Section 21 of ordinance 7 of 17 Aug. 1870, CO 148/1.
3- Strahan to Berkeley, 14 Apr. 1874, in Berkeley to Carnarvon, 4 May 1874, CO 147/30.
4- Mayne to Strahan, 18 Mar. 1874, in ibid. While in prison, the debtor was maintained by his creditor and had all "degrading" work done for him.

Although a severe measure of this sort seemed necessary, it could have resulted in virtual imprisonment for life, and the Colonial Office would not countenance a proposal that was so contrary to the views advocated by the British government.[1]

The Colonial Office was not unsympathetic towards the difficulties of the Lagos commercial community. In 1873, the courts were empowered to "deal with Real Estate by the same forms of law as if it were Personal Estate for the satisfaction of debt".[2] But while it was recognised that there were mitigating circumstances on the coast of West Africa, imprisonment for debt had become an anachronism and pressure was continually brought to bear on colonial governments to reform their existing debt laws.[3] For their part, the authorities on the spot made out a good case for retaining their own legislation. The Chief Magistrate of Lagos, R.D. Mayne, claimed that both European and African merchants were against alteration of the laws as they stood, and that the smaller African traders had even petitioned him to increase the severity of penalties levied on defaulting debtors. More important, he had found that the theory of debt on which the English law of limitation was based was "unintelligible" to the people of West Africa.[4]

The dilemma particularly in Lagos was that merchandise was en-

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1- Mayne to Fowler, 5 Dec. 1872, in Fowler to Pope Hennessey, 5 Dec. 1872, CO 147/27. CO to Keate, 28 Mar. 1873, ibid.
2- Ordinance 12 of 7 July 1873, CO 148/1.
3- See, for example, Kimberley to Kennedy, 5 Nov. 1870, CO 147/18.
4- Mayne to Strahan, 18 Mar. 1874, in Berkeley to Carnarvon, 4 May 1874, CO 147/30.

trusted to traders who acted as middlemen with the states in the interior and who did not necessarily have property of their own. On technical grounds, therefore, a law of limitation could not prove effective, as courts in Lagos would have scarcely any control over this type of discharged debtor. As Mayne pointed out:

> all the machinery of receivers and administration of property for the benefit of creditors presupposes a state of things where a debtor can ply his business under the eye and control of legal authorities. Here a debtor must either stay in Lagos, in which case he is removed from the only sphere in which he is likely to make any money, or leave it, in which case anything that he might make would be beyond his creditor's grasp. As soon as the creditor's right became of any value it would cease to be legally enforceable. So long as it was enforced it would be worthless. [1]

These arguments were seconded in a more general way by the designated Chief Justice of the Gold Coast colony, David Chalmers, who added that "amongst native Africans strict accountability in debt is universally recognised and enforced. When the English law relaxes the obligation it is out of harmony with true native feeling" and would result in the sacrifice of "an indigenous virtue".[2]

The Colonial Office, never one to oppose legal opinions and commercial representations at the same time, and always prepared to support an indigenous virtue, agreed to allow the existing laws to remain in force. But some alterations, it was warned, would have to be made to bring these laws closer to those in force in England.[3]

1- Ibid.
2- Chalmers to Ashwood, 2 May 1874, in ibid.
3- CO to Berkeley, 8 June 1874, CO 147/30.

Some change was indeed called for; measures taken against debtors had become blatantly illegal. Warrants for the arrest of debtors allegedly about to abscond "had been sworn to and issued very much as a matter of course", and it had also become commonplace to arrest them even when they possessed property. These practices were halted in 1875 by a new Chief Magistrate, James Marshall, who in fact released all debtors who had been imprisoned without a local ordinance to sanction their detention.[1] But no legislative action was taken, as ordinances amending the law of the newly established Gold Coast colony were then in preparation.

By an order made under the Supreme Court Ordinance of 1876, the treatment of debtors about to abscond was further regulated. Now it was provided that in a suit for £10 or more a plaintiff could apply to the court for security to be taken for the defendant's appearance. If upon investigation the court was satisfied that the defendant was about to abscond, or remove his goods from the court's jurisdiction, security for his appearance could be demanded. If the defendant was unable to furnish security, he could be taken into custody and treated like a judgement debtor until the case came before the court.[2] The laws against debtors, however, were in no way mitigated. As mentioned above, although the laws of England in force on 24 July 1874 were extended to the Gold Coast

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1- Marshall to Dumaresq, 4 Oct. 1875, in Strahan to Carnarvon, 10 Dec. 1875, CO 147/31. Marshall released all debtors who had been imprisoned under English Common Law as it stood in 1863.
2- The Supreme Court Ordinance of 1876, Order XIII, Rules 1-7.

colony, the Bankruptcy and Debtor's Acts of 1869 were specifically excluded from this general reception. According to the Supreme Court Ordinance, judgement debtors could now be imprisoned for up to three months if their debt did not exceed £15, for six months if it did not exceed £100, and for one year if their debt amounted to over £100.[1]

While opinions at the Colonial Office in 1875 apparently favoured maintaining the liabilities of debtors, less than a decade later disapproval was again expressed; and it was suggested that imprisonment for debt be abolished "except in cases of fraud". But the Permanent Under-Secretary of State, R.G.W. Herbert, remained firmly against any change, contending that bankruptcy legislation would be detrimental to small African traders in Lagos "who without this protection to the creditors will often be unable to obtain credit."[2] That this was hardly the case needs no argument, as it is quite clear that it was the large European merchants themselves who opposed legislation along these lines.[3]

Without liberal bankruptcy laws, a debtor in Lagos could be imprisoned for up to one year; when released, his creditor still held a judgement against him. Knowing thus that his property was liable to be confiscated upon his creditor's demand, he would hardly be encouraged to start in business again. Not only was this situation

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1- Ibid., Order XLVII.
2- Minutes by Wingfield, 6 Jan. 1883, Bramston, 9 Jan. 1883, and Herbert, 10 Jan. 1883, on Griffith to Kimberley, 28 Nov. 1882, CO 96/144.
3- See, for example, Smith to Moloney, 3 Aug. 1887, in Moloney to Holland, 3 Aug. 1887, CO 147/60.

totally unsatisfactory, it was as well wholly one-sided; English bankruptcy laws released debtors in England from obligations to African traders in cases of bankruptcy, whereas the lack of these laws in Lagos rendered African debtors liable for theirs despite circumstances. Perhaps because of the obvious unfairness of the situation, imprisonment for debt at Lagos was discouraged in later years. No debtors at all were imprisoned between 1886 and 1889, and from then until 1897, the number imprisoned yearly averaged only about eight. In 1897, however, the effects of declining economic fortunes increased both the number of "bankrupts" and the pressure on the administration to enforce debt obligations. In the six following years, a total of over two hundred debtors found their way into the Lagos gaol.[1]

While much of this increase was the result of trading conditions in the colony, some can also be attributed to the differing attitudes of Lagos judges to the problem of debt. E.H. Richards, for example, when acting as Chief Justice never upheld the practice of imprisonment for debt unless it had been proved that subsequent to the judgement, the debtor became possessed of sufficient funds and still refused to honour his debt. Others, like T.C. Rayner or W. Nicoll, responded to the economic situation by imprisoning debtors "pour encourager les autres". Debtors were even imprisoned

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1- See, Blue Books for the years cited, "Gaol Statistics", CO 151 series.

with felons and treated in a like manner after demolition of the debtors' prison at Okokomaiko in 1896.[1] Legally, there was little the government could do short of enacting bankruptcy laws on behalf of debtors; but on occasion, the executive pardon was granted when it was shown that a debt could not possibly be paid.[2]

Debtors in Lagos were, therefore, never afforded the benefits of the liberal bankruptcy and debt laws enacted in England in 1869. Although there was a theoretical basis for assuming that Lagos was within the jurisdiction of these laws after all, it was quickly pointed out that the Lagos courts lacked the jurisdiction to administer the laws, and no subsequent action was taken to alter this. Imprisonment for debt was an obnoxious practice to the minds of most officials at the Colonial Office, but it was in accordance with commercial interests at Lagos, and as such was not to be tampered with. Although the harshness of the law was at times tempered by the Lagos courts, the law remained in force and was utilised throughout the colony's independent existence.

By far the most perplexing legal problem that confronted the authorities at Lagos was that of land title. According to customary law, all land whether in use or not was owned, and this ownership was vested in the community at large. Because the Yoruba community was viewed as a corporate body comprising all members, past, present

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1- The Lagos Weekly Record, 4 July 1896, 1 Nov. 1902.
2- See, for example, minutes of the executive council of 7 Feb. 1901, CO 149/7.

as well as future, land was considered inalienable. On the other hand, English law recognised no equivalent concept for this kind of tenure; land was individually owned and was, of course, alienable. When Lagos was ceded to the British Crown in 1861, the distinction between the two forms of tenure was not appreciated, and it was also assumed that the cession treaty had granted ownership of the land to the Crown. The result has been that land title in Lagos remains to the present a controversial and far from resolved issue.

From 1862 until 1914, over four thousand "Crown grants" were issued by the colonial authorities. Grants were made to land under the following conditions: if the land had been originally granted by the Oba; received as a gift; purchased at public auction or private sale; inherited; or lastly if the land had been occupied since before the cession.[1] In all cases, these grants were issued on the assumption that rights to the land were held in freehold tenure. Throughout the nineteenth century and for the first two decades of the twentieth, the courts upheld the government's right to issue such grants and to sell or grant unoccupied land. In 1921, however, the Privy Council overruled previous decisions and held that the cession treaty did not change the form of tenure by which the land was originally held and that it ceded to the Crown only those rights to the land which the former Oba had. As it was further decided

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1- The discussion in this paragraph is based on T.O. Elias, Nigerian Land Law and Custom, London 1951, 15-25, and Sir Mervyn L. Tew, Report on Title to Land in Lagos, Lagos 1947.

that Dosunmu was not the owner of the land, the Crown, therefore, had only the radical or final title to the land, leaving the usufructary rights in its African owners.[1]

As a consequence of this decision, Crown grants in fee simple were invalid, and did not change the form of tenure by which the land had previously been held. The grants merely acted as conveyances without disturbing original communal rights to the land. But it has at the same time been agreed by the courts that subject to family or community rights Crown grants did confer upon the grantee absolute ownership of the land. In any event, all grants to foreignors have been declared to be in freehold tenure.[2]

It can only be fruitless to attempt to unravel the complications surrounding correct title to land, and for the purposes of this thesis it is not necessary to argue the relative merits of various court rulings on land tenure in Lagos. More pertinent to the discussion of the administration of law is to examine the way in which the colonial authorities handled the problem of land, and their reasons for allowing the situation to reach such a confused state.

Difficulties in ascertaining correct title to land were encountered from the beginning of the colonial period. During the consular period, land had been granted by the Oba to Europeans and Sierra Leoneans. It was later suspected, however, that many of these grants

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1- See, the judgement of the Privy Council of 11 July 1921 in Amodu Tijani v. The Secretary, Southern Provinces of Nigeria, N.L.R. III, 24-66. It is also a matter of controversy whether the owners of the land were the Idejo or White-Cap chiefs. Sir Mervyn Tew argues that they only hold the land in trust for their people. See, Tew, Report on Title, 9.

2- Tew, Report on Title, 16-18.

had been fraudulently obtained, especially so as it was found that some Sierra Leoneans, who had never been to Lagos, were able to produce grants signed by Dosunmu. Since these documents were not witnessed and Dosunmu could not read, there was some justification in the belief that title to the lands in question had not been legally transferred. Accordingly, a land commission was appointed in April 1863 to review the validity of such claims. The commission had the power to grant certificates of ownership to those who in the commission's judgement had bona fide claims to their land. If, however, it was decided that title was not valid, the commission would inform the Governor who could then institute proceedings against the occupant and have him evicted. This procedure was later amended, insofar as commission judgements became final proof against all other claims to land.[1]

The land commission was renewed the following two years, but in 1866 it was discontinued. According to the Administrator, the working of the court had "utterly broken down" and had been "the occasion of much injustice to the natives of the Settlement as well as detrimental to the interests of the Crown".[2] But although the functioning of the commission ceased in 1866, land problems continued to crop up. In 1869, therefore, a new land ordinance was enacted. By its provisions, the Administrator was empowered to verify individ-

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1- Freeman to Newcastle, 7 Oct. 1862, CO 147/1; ordinance 9 of 9 Apr. 1863, and ordinance 10 of 6 July 1864, CO 148/1.
2- Glover to Kennedy, 18 Jan. 1869, in Pope Hennessey to Kimberley, 11 Oct. 1872, CO 147/24.

ual title to land, and if no valid claim could be produced, the land "may be deemed by the Administrator to have reverted to the Crown". All land disputes would henceforth be settled in the Court of Civil and Criminal Justice before the Chief Magistrate,whose decision could be appealed to the West African Court of Appeal. All grants made either before or after 1861 had to be registered or would become invalid; but it may be doubted that this provision was enforced before 1883 when a Land Registry Office was established in Lagos.[1]

This ordinance, too, achieved little; land problems in Lagos were already too complicated by earlier government policies for such a remedial measure. Grants to occupied land had been issued by both Governor Freeman and Administrator Glover following the establishment of land commissioners in 1863, but at the same time grants had been revoked for failure to comply with African notions of tenure. Revocation of these grants - in one opinion - was "unquestionably illegal".[2] English law did not permit confiscation of land because owners failed to make improvements to it, nor would it permit such an action at the discretion of the executive, as provided in earlier ordinances. Moreover, the treaty of 1861 had stipulated that Dosunmu's stamp affixed to deeds of transfer would be proof of no other African claims to the land; but grants had been issued without any reference to the Oba's stamp, Dosunmu being entirely ignored in the

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1- Ordinance 9 of 4 May 1869, CO 148/1. The Registry Office was established by ordinances 8 and 12 of 1883; see, Elias, Nigerian Land Law and Custom, 260.

2- Mayne to Fowler, 26 Aug. 1872, in Pope Hennessey to Kimberley, 11 Oct. 1872, CO 147/24.

matter.[1] It was also at this time first realised that land originally granted by the Oba had been re-granted by the government in fee simple in accordance with English practices, and that these lands should not have been held under this form of tenure.[2] The colonial authorities were therefore fully aware in 1872 of the possibilities of future litigation, unless some radical measure was enacted.

The uncertainty of land title had also brought the colonial authorities into conflict with occupiers, some of whose grants had originated in the consular period. On one such occasion, a discrepancy in the dimensions of a pre-1861 grant and the subsequent colonial re-grant led Administrator Glover to a most ingenious conclusion. Dosunmu's grant - he argued - could not convey rights to the land forever, as this form of tenure did not exist under customary law. Since Banner Brothers (the grantees) held the land in fee simple, and since this tenure had been obtained through the colonial grant, the extent of the plot had to conform to the dimensions set forth in the latter grant. This logic allowed Glover to order Banner Brothers from the land not included in the colonial grant and to enforce this order with police action.[3]

The Colonial Office could not directly interfere with Glover's

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1- Article III of the treaty of 6 Aug. 1861; Fowler to Pope Hennessey, 26 Aug. 1872, in Pope Hennessey to Kimberley, 11 Oct. 1872, CO 147/24.

2- Ibid.

3- Glover to Sheppard, 5 Aug. 1871, CO 147/21. Pope Hennessey later instructed the Lagos government to sell the land in dispute to Banner Brothers for the nominal sum of 5s; Pope Hennessey to Kimberley, 26 Aug. 1872, CO 147/23.

decision in this instance, but it had become evident that commercial interests would suffer if title to land remained controversial. A more effective, overall ruling than those made by the land commissioners or the Governor was obviously needed. An Imperial Land Registration Act had been passed in 1868 to clarify a similar situation in Canada,[1] and it was suggested by the Emigration Board in London to have this act applied to Lagos. Local ordinances could then be passed making the registration of all instruments affecting real estate compulsory and providing for a judicial declaration of all title to land.[2] But although the Lagos authorities were instructed to prepare such legislation,[3] nothing was done in Lagos, nor did the Colonial Office take pains to press the matter. In 1878, six years after these instructions were given, the colony's Chief Justice warned of the state of land title and registration at Lagos, but by then the Colonial Office thought it better "to leave well alone", as "there does not appear to be any crying evil in Lagos".[4]

This complacent attitude did not last very long. One year later, the acting Administrator complained that land problems were proving insurmountable and the resulting unsettled state could only be ended by a legal inquiry to determine once and for all the rights to land in the colony. He suggested that the inquiry be headed by a legal

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1- 31 Vict. c. 20.
2- Emigration Board to Herbert, 10 Oct. 1871, CO 147/22; Emigration Board to Herbert, 16 Nov. 1872, CO 147/25.
3- Kimberley to Pope Hennessey, 28 Nov. 1872, CO 147/25.
4- Chalmers to Wingfield, 26 Aug. 1878, CO 147/36; minute by Fairfield, 18 Sept. 1878, on ibid.

officer, as the failure of the earlier land commissions had shown that a legal knowledge was essential. Although the Colonial Office reiterated their suggestion that provision be made for the future registration of instruments affecting land and the judicious declaration of title, it would not agree to a full-scale inquiry into the problem of land title.[1] The problem was, of course, more complicated in 1878 than it had been earlier. The Lagos government had never been very consistent in their methods of issuing grants, nor had the procedures they followed always been in accordance with the law. Although there was no authority to grant land in the period 1866-1868, over three hundred grants were made, purportedly after investigation by land commissioners.[2] And there was even one instance of a grant of land being made in the name of the Lieutenant-Governor of Lagos instead of the Queen's. Further, there was still reason to doubt the procedure by which grants were being made even as late as 1878.[3]

Other complications had also by then arisen. Original grants had been cut up in the intervening years and re-issued, had been cancelled, with no record of the cancellation kept, and new grants had subsequently been issued to these plots. Holders had lost their grant certificates, which could not now be verified as the colony's land records were incomplete. Finally, and most difficult of all to

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1- CO to Lees, 23 May 1879, CO 147/37.
2- Tew, Report on Title, 12-13.
3- Chalmers to Wingfield, 26 Aug. 1878, CO 147/36.

set right, land formerly squatted upon had since been sold or transferred.[1]

With the problem grown to such proportions, the Colonial Office was wary of instituting an inquiry which in the circumstances might easily have disrupted the entire commercial life of the island. Many grants had been made to large mercantile houses and individual traders since the previous inquiries by the land commission, and most of these claims would doubtless have proved invalid in the course of fresh inquiries. Moreover, the numerous land cases then being brought before the courts were sufficient in themselves to deter the Colonial Office from any attempt to settle these claims en masse. With the restrictions imposed on lawyers in civil cases, there was no present danger of these cases choking the tight schedules of the colony's courts, but an inquiry into land title would have opened wide the floodgates.

No further action was therefore taken, and the Lagos authorities even forgot to implement the half-way measures proposed. The Queen's Advocate at Accra had been charged with preparing the suggested legislation, but through neglect for his official duties, he had still not drafted the ordinances by 1882.[2] In the meantime, the Lagos government, having sold a piece of land under the impression that they held title to it, later discovered that the land in fact belonged to a private party. On that occasion, the mistake cost the

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1- Moloney to Lees, 8 Jan. 1879, CO 147/37.
2- Moloney to Kimberley, 19 Aug. 1882, and enclosures, CO 147/50; minute by Hemming, 21 Sept. 1882, on ibid.

government over £125 to rectify and evoked an indignant reply from the Colonial Office, who had not been aware of, or sufficiently concerned with, the colony's failure to act on their now ten year old instructions.[1]

Finally, in 1883, an ordinance was enacted providing for the registration of all instruments affecting land in the colony. Registry offices were established at Accra, and Cape Coast and at Lagos. It was provided that all future grants, judgements or transfers of land had to be registered within one month at one of the colony's Registry Offices, or would be deemed to be void.[2] No provision, however, was made to unravel the problem that already existed and the measure only ensured that future transactions would not further complicate the situation. Even before it was enacted, the Colonial Office recognised the deficiencies in the new law,[3] but they preferred not to take any more definitive step, hoping as it were that by not mentioning it the problem would somehow clear itself up.

The situation, of course, did not resolve itself. By the end of the century, the basic problem of determining what title was being conveyed in Crown grants and private transactions was still obscure. Of Crown grants, almost three thousand, five hundred had been made by then, either freely or accompanied by a small fee payable to the Lagos treasury. As well, grants of swamp land had been

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1- Ibid.; CO to the Officer Administering the Government, 2 Oct. 1882, CO 147/50.

2- Ordinance 8 of 24 Mar. 1883, CO 97/3. This was amended by ordinance 12 of 14 Nov. 1883.

3- Minute by Wingfield, 15 Dec. 1882, on Rowe to the Under Secretary of State, 13 Oct. 1882, CO 96/147.

made on condition that the land was to be improved, or title to it would revert to the Crown. Similarly, land was being continually occupied by "squatters" who at this time were being issued with "permissive grants", which were subject to the Governor's pleasure, their status being tenants at will.[1] By the 1890's, it was the latter form of tenure that was increasingly being used to describe grants issued by the government. Like the land tenure that had obtained under African rule, land was not alienated by permissive occupancy grants, and the conditions under which they were issued - clearing the land, fencing it and building on it - also did not differ substantially from those stipulated by customary law.[2]

The various forms of tenure by which land was held on the island of Lagos testified to the fact that the government itself was uncertain as to the rights the Crown possessed over the land. There were two opposing views on this subject which were not reconciled so long as Lagos remained independent. The first had assumed that the land and the rights to it, in the English sense, had been ceded to the Crown in 1861; whereas the other recognised that land in this part of Africa was communally held and was therefore inalienable. Although these views were in diametric opposition to each other, this had not prevented the Lagos authorities or the Colonial Office from employing either when it seemed convenient. Thus, over three thous-

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1- Denton to Chamberlain, 4 Oct. 1898, CO 147/135; Higgins to Millson, 7 Mar. 1888, in Moloney to Holland, 20 Mar. 1888, CO 147/63.
2- See, Government Notice of 20 May 1891, in Denton to Knutsford, 22 May 1891, CO 147/80.

and five hundred freehold grants had been made by the turn of the century, and the Colonial Office could quite naturally decide that no matter what the previous condition of land had been, the Crown's rights to it had been assumed and acquiesced in.[1] Still, the trend in the 1890's was away from the concept of granting land in fee simple, which assumed the Crown's absolute rights to it, towards the African concept of permissive occupancy.

Neither the Colonial Office nor the Lagos government approved the trend of recent years away from the earlier practice of issuing freehold grants, but because of the legal uncertainties regarding land tenure, it had been reluctantly accepted. Again it was suggested that an inquiry be made by a commission to resolve the anomalous situation once and for all;[2] but the newly appointed Governor of Lagos in 1899, William Macgregor, did not think the time appropriate for such a commission. He too disagreed with the issuing of permissive occupancy grants and was "fully convinced that our policy here should be to facilitate transactions in land rather than to bind up land tighter than does even native custom."[3] He had already noticed the tendency in Lagos to accept the doctrine that all land in this part of Africa had an owner, and that under customary law it was not alienable. Just previous to his arrival in the colony, this point of view had been seconded by reports made by the Chief Justice

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1- CO Minutes by Antrobus, 17 Dec. 1898, Cox, 20 Dec. 1898, and Wingfield, 23 Dec. 1898, on Denton to Chamberlain, 4 Oct. 1898, CO 147/135.

2- CO to the Officer Administering the Government, 17 Jan. 1897, CO 147/135; Denton to Chamberlain, 4 Oct. 1898, ibid.

3- Macgregor to Chamberlain, 7 July 1899, CO 147/143.

and one of the colony's District Commissioners on customary land tenure,[1] and Macgregor feared that if this were further laid down by a land commission, it would greatly retard the practice of buying and selling land freehold. To his mind it was irrelevant whether the customary law existed in an absolute and exclusive form. If this were the case, Macgregor thought it simply "should not be maintained or encouraged". It was therefore agreed, once again, to postpone the inquiry into land title[2], and, in fact, no land commission convened while Lagos still remained an independent colony.

In recognition of the difficulties that might result from the introduction of freehold tenure in other parts of the colony and protectorate, by the end of the century official policy was to confine freehold grants to the island of Lagos alone. Some grants had been made on the mainland as early as the 1860's - at Ebute Metta, for example,[3] - but this had ceased by the 1890's and was not practised in the areas acquired after 1892. It was also government policy not to allow African authorities in the protectorate to issue freehold grants: chiefs and headmen could only grant occupation title to foreignors, including missionaries, and this was later extended to natives of the country.[4] In the case of the protected territories

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1- See, "Native Land Tenure in West Africa - a precis", by T.C. Rayner, and "Land Tenure", by J.J.C. Healey, in Denton to Chamberlain, 4 Oct. 1898, CO 147/135.

2- Macgregor to Chamberlain, 28 June 1899, CO 147/143; CO to Macgregor, 1 Aug. 1899, ibid.

3- During 1867-68, Glover settled a large number of Christian refugees from the interior on land at Ebute Metta. See, Tew, Report on Title, 23.

4- McCallum to Chamberlain, 18 Oct. 1897, and enclosures, CO 147/119. The Lagos Weekly Record of 18 Apr.1903 reported that the Governor had recently invalidated a grant made by the Bale and council of Ibadan to a Lagos resident of Ibadan origin.

and the parts of Yorubaland later included in the Lagos protectorate, the government's land policy was also dictated by political considerations. Indigenous authority would have been undermined by a change in the form of tenure under which land was held, and the colonial authorities were not prepared to see this happen in Yorubaland.

It can be seen, therefore, that in their treatment of the problem of land title, the colonial authorities failed to act decisively. As difficulties in ascertaining the rightful ownership of land became progressively more complicated, this indecision became reluctance on their part to face a problem of such magnitude. Much of this attitude can be attributed to sheer incompetence, but there remains also the suspicion that it was not all without intention. In the 1860's, Crown grants to occupied lands were made at a charge of 30s, and land that was assumed to be the Crown's was sold at £3 an acre.[1] Moreover, there was also some speculation that the introduction of individual title to land would tend to facilitate the collection of taxes should such a measure have been thought necessary.[2]

Most important to the overall interests of the colony, grants of land held by European commercial houses in fee simple were of dubious validity, and any inquiry into land tenure in the colony would have revealed this. In order, therefore, not to precipitate

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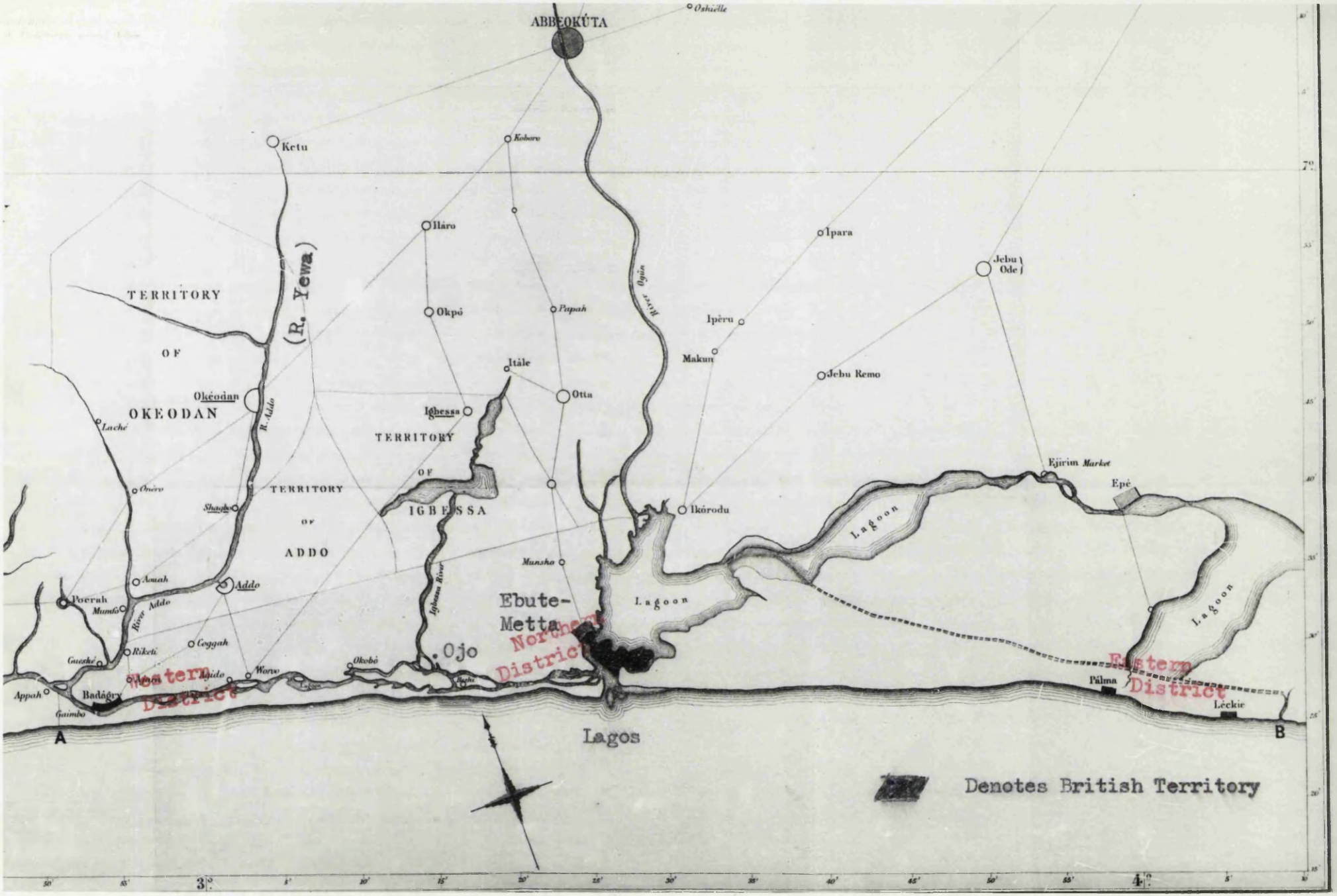
1- Fowler to Pope Hennessey, 14 Oct. 1872, CO 147/27; this document can also be found in Newbury, British Policy Towards West Africa, 640.

2- Glover to Kennedy, 5 Aug. 1869, in Kennedy to Granville, 14 Aug. 1869, CO 147/15.

an economic crisis, the government demurred in tackling the problem. When it was eventually decided by the Privy Council that the Crown did not possess absolute title to the land, it was by then too late to change a situation that had existed for over half a century, and the freehold tenure by which commercial interests - among others - held their land was confirmed. By not acting promptly to resolve the problem, the colonial authorities were able to affect a minor revolution in the system of land tenure at Lagos, albeit not without leaving considerable difficulties in its wake.

LAGOS AND THE DISTRICTS



CHAPTER VI

The Districts and the Expansion of the Colony's Jurisdiction

The early courts and the Supreme Court system were not confined in their operation to the island of Lagos alone. Throughout this period, the island of Lagos was the focal point of a colonial administration that extended from Badagry, some thirty miles to the west, to Leckie, approximately the same distance to the east. As well, the island was the centre of an expanding "protectorate", which at the turn of the century stretched from the sea-beach adjoining the Bight of Benin as far inland as the former "capital" of Yorubaland, Oyo. In both areas, the colonial authorities exercised some form of jurisdiction: in the colony's districts jurisdiction was acquired by treaties ceding sovereign rights to the Crown; in the protectorate it was either acquired by treaties with individual African states or assumed on the basis of the indigenous population's acquiescence.

In February 1863, the towns of Palma and Leckie were ceded to the British Crown by the former Oba of Lagos, Kosoko, whose rights to these places had been recognised by Britain during the consular period. Later in that year, the chiefs of the town of Badagry ceded their soverign rights to the Crown.[1] Palma and Leckie became the

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1- Treaties of 7 Feb. 1863 and 7 July 1863, in Sir E. Hertslet, The Map of Africa by Treaty, London 1897, I, 95, 97.

eastern district and Badagry the western district of the settlement of Lagos. As British territory, both areas came directly within the jurisdiction of the colonial authorities, and both had the same status in law as the island of Lagos itself. It was not, however, possible to extend the machinery of colonial administration that existed in Lagos to the newly ceded towns. Even at Lagos, financial considerations precluded any elaboration of rudimentary institutions, and these areas had, therefore, to make do with whatever could be afforded. More important, neither district had the commercial potential of the island, and despite occasional flourishes of business activity, neither was able to attract any lasting interest.

Although some administrative machinery had to be present, these areas had been acquired solely to ensure that customs duties levied on imports into Lagos would not be evaded by landing goods at either place; consequently, internal affairs in the districts could be easily disregarded. Civil Commandants were, accordingly, appointed for both Badagry and Palma in 1863, but until Lagos became part of the Gold Coast colony, the districts were administered along very informal lines. Police Courts, for example, operated at both places without any legal constitution to govern their jurisdiction or procedures. The courts functioned in both civil and criminal matters, though it was not until 1870 that they became legally competent to hear civil cases.[1] The machinery of justice did not always function

1- By Ordinance 7 of 1870, which established the Lagos Court of Requests.

smoothly. Once when the Civil Commandant of Badagry, Thomas Tickel, took leave of absence, the Lagos authorities forgot to replace him with another colonial officer. Some months later the Administrator was apprised of this and of the fact that there were some prisoners at Badagry who had been awaiting trial "for a considerable time" - in fact, since Tickel had gone on leave.[1]

With the establishment of the Supreme Court system in 1876, the Police Courts in the western and eastern districts became District Commissioner Courts with a well-defined and limited jurisdiction in civil and criminal matters.[2] While the role played by District Commissioners at Lagos was greatly restricted by judicial duties that occupied most of their time, in the districts, commissioners had to perform both judicial and executive duties and supervise all governmental activities. These tasks were accomplished with little direct control from Lagos, where officials were not sufficiently concerned with such matters to oversee their performance. Periodically, it was therefore necessary to remind commissioners not to exceed their legal powers and to make sure that their subordinates conformed to these standards as well.[3]

There was no steadfast rule by which commissioners were chosen. In the western district, Tickel, a long-resident European trader,

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1- Fowler to Pope Hennessey, 14 Aug. 1872, CO 147/24.
2- See above, chapter III, for the powers of District Commissioners under the Supreme Court Ordinance of 1876. The District Commissioner Court of the eastern district was located in Leckie.
3- See, for example, Circular 1495 of 8 Sept. 1879, in Ussher to Hicks Beach, 10 Nov. 1879, CO 96/128.

served as commissioner from 1867 until 1878, when he resigned, and then for short periods in 1879-1880 and 1882-1883, when the colony was hard pressed for personnel. In between Tickel's tenure and after 1884, the western district was administered by officers of the constabulary, some six in number between 1878 and 1884 alone. The experience in the eastern district was almost entirely different. With the exception of a six month period in 1880 when A.W.W. Forbes, a constabulary officer, acted as commissioner, the district was administered by two Sierra Leoneans - until 1880 by John Smith and from then on by George Smith (no relation). At one point after John Smith left, it was thought best to have a military man at Leckie - as the case was in the western district - but this was objected to and the civilian, George Smith, was appointed.[1]

Neither arrangement proved very satisfactory. District Commissioners at Leckie were even less qualified for their civilian duties than their military counterparts at Badagry. George Smith seemed a particularly poor one: "an honest but mediocre officer" in Governor Ussher's opinion, but to Governor Moloney's mind, "a more wooden headed creature I have never met."[2] Although originally native to the area, Smith seemed bent on irritating the people with whom he had to deal. "Uncouth and harsh in his manners, disagreeable, hasty and of an irritable disposition" - in the Administrator's opinion -

1- Griffith to Ussher, 20 Jan. 1880, in Ussher to Hicks Beach, 1 Mar. 1880, CO 147/40; Blue Book for 1880, "Judicial Department", CO 151/18.

2- Quoted in minute by Hemming, 22 Dec. 1893, on Carter to Ripon, 22 Nov. 1893, CC 147/91.

Smith was the cause of frequent misunderstandings with the people of Leckie and the towns around, and was also guilty of misusing customs revenues.[1]

In the western district, the experience was hardly better. Tickel was severely censured in 1876 by the then Chief Magistrate, James Marshall, for the impropriety of his conduct while a case was sub judice; and he refused to disqualify himself for cases involving his wife, an African trader at Badagry, who not surprisingly seldom lost suits in his court.[2] Constabulary officers were no better. On the whole, they cared little for the administration of their districts, viewing their short terms of office as temporary interruptions in their constabulary duties at Lagos. One officer, E.W.G. Gardiner, was dismissed from colonial service for general laxity and misconduct while discharging his duties as commissioner there.[3]

The administration of justice was quite naturally affected by the indifference of District Commissioners or their general incompetence. Court records were seldom kept up to date, and the few instances of illegal proceedings that were noticed by the authorities in Lagos led Governor Ussher to assume that these were but a few of many similar occurrences.[4] Of course, it is always difficult to assess the extent to which malpractices brought to the attention of

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1- Griffith to Rowe, 24 Sept. 1881, in Rowe to Kimberley, 26 Oct. 1881, CO 147/45.
2- Thorp, Ladder of Bones, 90-91.
3- Ussher to Hicks Beach, 12 Mar. 1880, CO 147/40.
4- Ibid.

the authorities is indicative of the larger picture; but although it may be claimed that such examples are exceptional with inexperienced, untrained officials, scarcely interested in their work in the districts, it is more likely that such incidents characterised the total picture and were but a fraction of what occurred.

The administration of justice in the districts was aided by units of the Lagos armed and civil police. Their numbers varied from year to year, but approximately forty were stationed in the western district and forty-five at Leckie.[1] These forces, however, were never sufficient in numbers to cope with problems of law enforcement in districts the size of Badagry, which had some eight thousand people by the 1880's.[2] Petty theft became a commonplace, with no way of controlling it in the absence of a larger force. Tickel complained to this effect in 1880 and suggested that Badagry's ward chiefs be empowered to select young men to comprise a "night watch", for which a slight remuneration would be made by the colonial treasury. But although this suggestion was favourably received in Lagos and London, the Badagrian "night watch" was never constituted.[3]

As for the courts, it has been suggested that "competition to

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1- The figures for the armed and civil police are based on the returns in Moloney to Lees, 7 Jan. 1879, CO 147/37, and Blue Books for 1877/1885, CO 151/15-23.

2- By the census of 1881, there were 7792 inhabitants in the western district. Census in Moloney to Kimberley, 6 June 1882, CO 96/140.

3- Tickel to the Assistant Colonial Secretary, 26 Jan. 1880, in Griffith to Ussher, 13 Feb. 1880, CO 147/40; CO minutes on ibid. There is no further mention of the "night watch" in the records, nor any expenditure recorded for this purpose.

the judicial prerogatives of the administration (of the western district) was officially discouraged."[1] This does not, however, seem to have been the case any more than it was at Lagos. During the ten years from 1876 through 1885, criminal cases heard in the Badagry District Commissioner Court amounted on the average to just under four a month, and one estimation of the number of civil causes brought there monthly placed it at "about a half a dozen."[2] In comparison, the eastern district, which had a population forty per cent. smaller than Badagry, handled more than double this number of criminal cases in its District Commissioner Court during this same ten year period.[3] Moreover, that Tickel could suggest in 1880 an African police force to supplement the colonial police force at Badagry points to a situation rather like that which existed at Lagos, where customary courts continued to function side by side with British courts.

Badagry & Leckie Criminal Courts, 1876-1885 *

	Total cases heard	Dismissals: on merits	Dismissals: for want of prosecution.	Convicted: Sent for trial	Convicted: Fined	Convicted: Gaoled	Otherwise disposed of
Badagry	464	23	58	32	81	237	33
Leckie	970	125	50	31	400	205	159

* Return of cases tried at Badagry and Leckie in Moloney to Holland, 17 Aug. 1887, CO 147/60.

1- Newbury, The Western Slave Coast, 85.
2- Bailey's report on District Commissioners, 22 July 1882, in Moloney to Kimberley, 24 July 1882, CO 96/141.
3- See chart below. The 1881 census showed 4519 inhabitants in the eastern district. Census in Moloney to Kimberley, 6 June 1882, CO 96/140.

The courts at Badagry and Leckie, like the District Commissioner Court at Lagos, were there primarily to maintain British authority and not as institutions for the general use of the local African population. Most criminal cases brought before the courts were minor and punished by small fines or imprisonment for short periods. As the chart above shows, less than seven per cent. of the cases at Badagry and less than three per cent. of those at Leckie were sufficiently serious to be sent for trial at the Lagos Assizes. Like the Lagos District Commissioner Court, also, the percentage of convictions at both places was very high; in fact, over eighty per cent. of the cases heard in these courts resulted in convictions. And the care with which commissioners tried cases must, therefore, be suspect as instances of the accused being presumed guilty until proved innocent.

In the last decade and a half of the nineteenth century, the climate of official opinion towards British West Africa became more sympathetic. The pressure of foreign competition for colonial empires forced officials in London to address themselves to problems that had not formerly been regarded as important. Administrative centres like Lagos were now recognised as future capitals of large West African colonies that would stretch far inland from the coast. More thought was given to administrative details, and colonial establishments were enlarged to provide the necessary means by which to bring their hinterlands under control. Overall, the quality of administration on the island of Lagos rose considerably, and for the

first time in the colony's history, general questions of policy were being imaginatively posed.

This was not, however, the case for the colony's districts. The partition of West Africa had effectively blocked any further expansion of Lagos along the coast and turned the emphasis of colonial expansion north into the interior. As a consequence, interest in the districts declined, and the personnel necessary for improving the administration of these areas were used instead to pacify and then to administer the areas coming under British control in the 1890's. Although the districts were reorganised twice after 1886, once to re-define the area included in the districts as distinct from the protectorate, and the other to make provision for the newly ceded districts of Epe and Ikorodu,[1] effective control required more than just a division of labour on paper. Without increases in personnel, authority in these outlying areas continued to depend almost entirely on the imminent approach of a gun-boat from Lagos, which was no substitute for the physical presence of administrators and armed troops.

To be sure, an extensive administration was not thought necessary for commercial enterprise, which in the districts was usually in the hands of emigrant or local traders, and which was not of a scale as to require more than the meagre facilities provided by District Commissioner Courts. But the half-way measures of British rule in

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1- Moloney to Knutsford, 9 Apr. 1890, CO 147/74; Carter to Ripon, 10 Dec. 1894, and enclosures, CO 147/96.

the districts satisfied no one and were looked upon as worse than nothing at all. The authority of traditional rulers in these areas was being destroyed; and unlike the situation in Lagos nothing was being done to replace it. As one District Commissioner complained: "for years we seem to have been breaking down the old order of things and have placed nothing in its place or practically nothing."[1] Although there were definite drawbacks to African rulers continuing in positions of authority, the alternative, which was to replace them with direct British rule, would have had equal shortcomings. The result, therefore, was a form of rule that lacked the necessary control and authority to govern effectively.

The defects of colonial rule in the districts did not go unnoticed. The amount of crime in towns under British control, and conversely the lack of crime in places still under African rule were often cited to justify the continuation of traditional authority in outlying areas. African rule, it could be observed, maintained a healthy respect for law and order, if only by inflicting penalties that were both feared and understood by townspeople. It was claimed that at an earlier period,

> when crime became so rampant at Badagry that the police were unable to cope with it, the custody of the town was placed in the hands of the native authorities, and as a result crime ceased altogether. 2

Whether this was wishful thinking or not, the fact remains that

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1- Pennington's report, in Macgregor to Chamberlain, 19 Oct. 1899, CO 147/145.
2- The Lagos Weekly Record, 27 Jan. 1900 and 24 Oct. 1896.

the half-way measures applied to the districts did not prove effective. It is doubtful that anything less comprehensive than the administrative machinery found on the island of Lagos could have served this purpose, and even then the existence of large tracts of bush in the districts would not have admitted for administration of the niceties of English law. "What is wanted", complained a District Commissioner, "is a short and summary method of dealing with malefactors and disturbers of the peace." The laws of the colony were clumsy and difficult to administer "in the middle of West African Jungle," and the restrictions imposed on magistrates with regard to the length of imprisonment or the infliction of hard labour verged in his opinion - "on the ridiculous".[1]

As it was, the districts were neither wholly under British control and administration nor under African. The Crown's jurisdiction could only be enforced in the northern district[2] within limited areas where stipendiary chiefs and headmen resided. In fact, no attempt had been made to exercise jurisdiction in a more general way; with the exception of two constables stationed at Ebute Metta, these stipendiary chiefs and headmen were the only resident representatives of the Lagos government in the district until the 1890's.[3]

The situation was hardly different in the eastern district, even

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1- Pennington's report, in Macgregor to Chamberlain, 19 Oct. 1899, CO 147/145.

2- The northern district was that area of the mainland, northwest of the island of Lagos, where Lagosians had their farms. It included the town of Ebute Metta. See the map of the districts facing page 1 of this chapter.

3- Moloney to Holland, 23 Feb. 1888, CO 147/63.

with the presence of a sizeable military and police contingent. Although at least forty armed and civil police were in the district from 1890 on, the difficulties of enforcing the colony's laws were always formidable. The licensing of spirit wholesalers, for example, was accomplished only after the law was changed to take into account the overall impotence of the government in the district. Originally the cost of wholesale licenses was put at £25 per annum; but as no licenses were applied for at this rate, the annual fee was reduced to £10. In this way it was hoped that some dealers would purchase licenses at the lower rate, and if illicit traffic in spirits continued, information would be given by the licensees to protect their own interests.[1]

In the absence of an adequate number of officials, much of what could be accomplished in the districts depended on the quality of the few who actually resided there. Unfortunately, minor officials at these outposts could never be relied upon: the gaoler at Leckie, for instance, was convicted of taking a bribe from a prisoner who was then allowed to escape;[2] and the District Commissioner at Leckie from 1880 to 1890, George Smith, was a constant source of dismay to his superiors. Chief Justice Smalman Smith's opinion was that "he "has not shown himself capable of discharging the duties of his office in a satisfactory manner and I have frequent reason to com-

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1- Denton to Ripon, 27 June 1893, CO 147/90.
2- Stallard to the Colonial Secretary, 1 Oct. 1890, in Moloney to Knutsford, 21 Dec. 1890, CO 147/77.

plain and correct."[1] After George Smith, District Commissioners at Leckie were usually legal men and the same problems did not arise; still, occasionally constabulary officers were called upon to act temporarily in this capacity.

Overall, it cannot be said that British rule in the eastern district penetrated very deeply into African society. The District Commissioner Court was used only as a last resort by the local populace, when they were unable to compose their differences in the customary way; and very few crimes were successfully detected or prosecuted. Over one three month period in 1891, only sixteen cases appeared before the court, nine on criminal charges and only seven for civil purposes - hardly an indication of British institutions being used in the district, and this almost thirty years after Palma and Leckie had been proclaimed part of the colony.[2]

The experience of the western district was similar during this latter period. With less than the number of police stationed at Leckie, the Badagry district, comprising over twenty-two thousand people in 1891, was even harder to control. The situation there was (at times) farcical: the people laughed at the police, refused to obey them, and in numerous instances prisoners were "rescued" after an arrest had been made. On some occasions, cutlasses were drawn to prevent the service of summonses, and those who had provoked the

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1- Smalman Smith to Moloney, 19 Jan. 1888, in Moloney to Holland, 10 Feb. 1888. CO 147/63.

2- Quarterly report by Haddon-Smith,in Denton to Knutsford, 24 July 1891, CO 147/80.

incident could only be punished after the chiefs of Badagry had brought them before the District Commissioner.[1]

The lawlessness of the western district became notorious. One District Commissioner, who had served on the Gold Coast previously, confessed that he had had more trouble at Badagry than in all other towns on the Gold Coast "put together".[2] By the turn of the century, conditions there were even worse: The Lagos Weekly Record mockingly wrote that

> it appears that the good people of the district have gone a step further than usual and have now taken to highway plundering and murder on the riverways. 3

This the paper later attributed to the complete breakdown of traditional authority at Badagry, which had given the police there a superior status to village chiefs and allowed offenders to escape punishment by bribery of corrupt constables.[4]

Like the eastern district, much of what happened in the western district depended on its administrative personnel. After Tickel's death in 1886 and until 1893, District Commissioners at Badagry were temporary appointees from whichever department of government could afford to furnish them. Medical or constabulary officers were usually available for temporary assignments, even though experience showed they did not usually make very good commissioners. It was

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1- Higginson to the Colonial Secretary, 10 Dec. 1889, in Denton to Knutsford, 22 Dec. 1889, CO 147/73.
2- Ibid.
3- The Lagos Weekly Record, 2 Feb. 1901.
4- The Lagos Weekly Record, 22 Nov. 1902; see also, The Lagos Weekly Record, 4 June 1898.

somewhat ironical that constabulary officers when acting in these temporary appointments often concentrated solely on their magisterial duties to the detriment of their non-judicial functions. At least once it was necessary to remind one that he was also in charge of the constabulary unit at Badagry and that he should adhere to the routine of duties observed at headquarters. In the time that he was at Badagry, he had also forgotten to visit the prison, which as deputy sheriff he was required to do.[1]

With inadequate means by which to rule the district, the effectiveness of measures too often depended on the person in office instead of the office itself. Tickel, who served at Badagry for almost twenty years, had had a good understanding of the people of the district. He had known their customs, their languages, their laws. He had married an African from the area and resided there most of his life. This familiarity had proved invaluable in securing a temporary ascendancy over the affairs of the district and in keeping abreast of whatever transpired within it. Personal contacts had been built up over the years, and Tickel could expect his confidants to keep him well informed. After his departure, however, the familiarity, the contacts, the overall knowledge of the community, the sympathetic attitude towards its problems were all lost and could not be regained by the temporary commissioners assigned to Badagry or or the more permanent officeholders, who remained at best a year or

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1- Woolhouse to Tarbet, n.d., in Moloney to Holland, 20 Jan. 1888, CO 147/63.

two in the district.

On the whole this meant not only that control over the district was tenuous; as well it resulted in a general neglect of its administration. The prison and the court house both remained in a constant state of disrepair. The gaol, which had four communal cells, had also to serve as a police lock-up, and it was impossible under the resulting crowded conditions to enforce any separation or discipline of prisoners.[1] Even by the turn of the century nothing had been done to correct this: in fact, while the average number of prisoners kept in Badagry gaol was only seventeen in 1891, by 1902 this figure had increased to thirty, with no improvement having been made.[2] As for the court house, in 1893 the acting Governor visited the district and reported the need for a new building to replace the old one, which had formerly been a kernel store and was now in "wretched condition". But it was not until 1901, eight years later, that this report was heeded and a new building erected.[3]

Conditions at Badagry were by the 1890's symptomatic of the central administration's declining interest in the colony's districts. With commissioners prepared only to complete their tours of duty and then be assigned to more favourable positions, almost no pressure was brought to bear on the administration at Lagos to improve these conditions. Consequently the tools for efficient administration were

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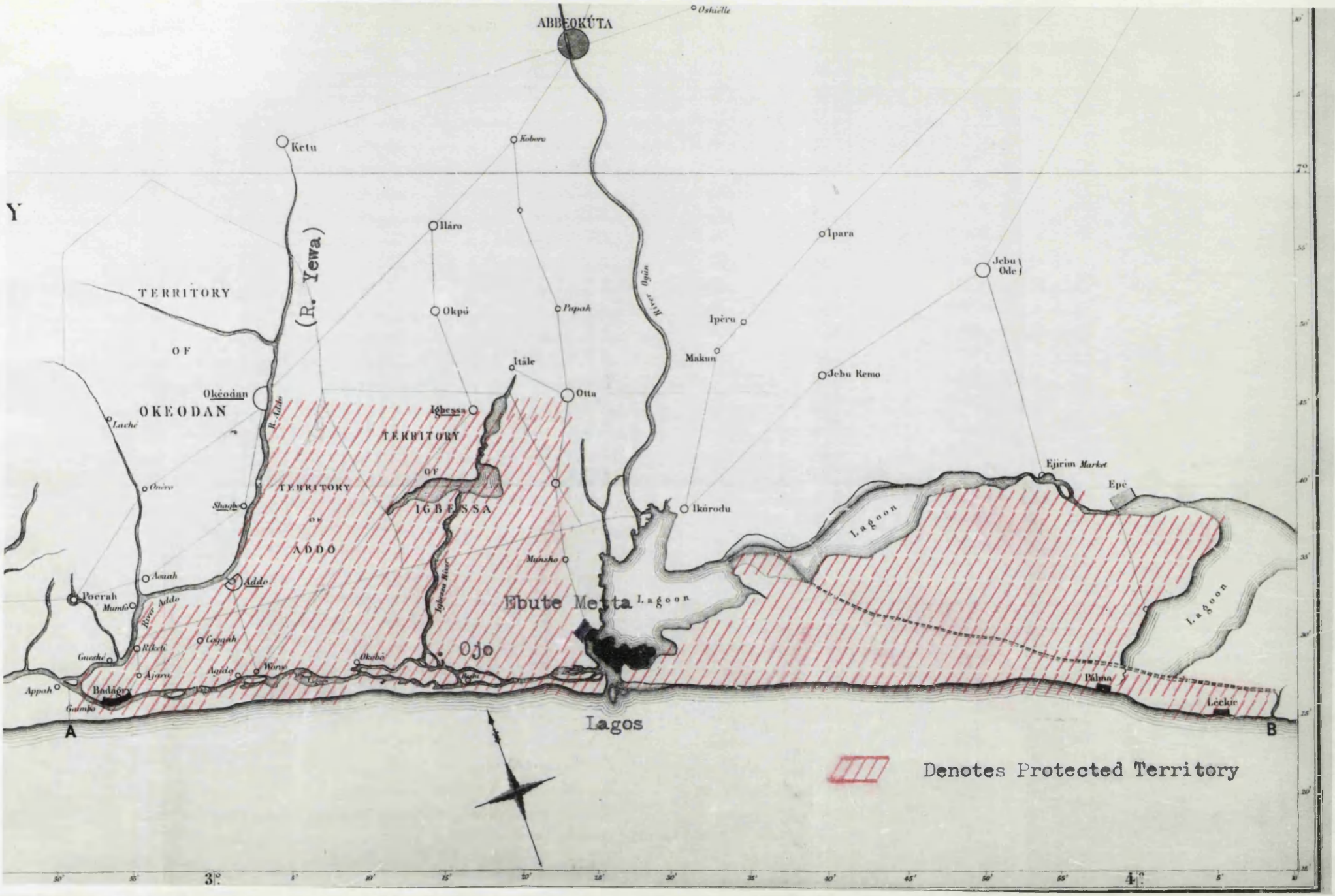
1- Peel's report, in Denton to Knutsford, 18 July 1891, CO 147/80.
2- Ibid.; The Lagos Weekly Record, 11 Oct. 1902.
3- Denton to Ripon, 2 Nov. 1893, CO 147/91; Annual Reports for 1900-1901, CO 149/5, pp. 32, 33.

THE PROTECTORATE, 1871



allowed to deteriorate, causing a similar decline in the effectiveness of colonial rule. The shift in the emphasis of expansion away from the coastal sea-bench to the interior north of the colony left the districts in positions of second importance, and their administration did not, therefore, excite the interest of the authorities in Lagos. Colonial administration in the districts failed on the whole to make any impression on the African population in more than forty years of colonial rule.

Apart from those areas included in the colony's districts, there existed throughout the nineteenth century an undefined jurisdiction over parts of the mainland regarded as "protected territories". In 1863, acting Governor Glover negotiated protectorate treaties with the chiefs of Addo, Ipokia and Okeodan, to forestall French advances on the western flank of the colony; and a subsequent definition of the areas under protection included all the land north of the lagoon between the river Yewa on the west and a line drawn due east to Igbessa, through the town of Otta and south to Ebute Metta.[1] No jurisdiction was ceded in these treaties, but immediately they were concluded, Gover sent an emissary to inform the chiefs that duty would have to be paid on all European goods entering their areas by way of Porto Novo.[2]

The expansion of Lagos to include these protected territories

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1- Treaties of Protection with Addo, 27 June 1863, Ipokia, 29 June 1863, and Okeodan, 4 July, 1863, in Hertslet, Map of Africa, I. 96-97. See the map of the Lagos Protectorate, facing.
2- Newbury, The Western Slave Coast, 70.

was not ratified by the Colonial Office; and the inclusion of Igbessa and the area north-west of Ebute Metta, as defined in 1871, was purely arbitrary, without basis in treaty or agreement. Yet in spite of this lack of jurisdiction, Lagos magistrates and commandants held courts in these areas and decided cases involving the indigenous population alone. Glover himself visited the "protectorate" and decided cases there, and he even began construction of a court house at Ishasi in 1867, a town eight miles north of Ojo market.[1] During the latter years of Glover's administration, Lagos constables patrolled the roads from Ebute Metta to Otta, that is, within the "protectorate"; but they were also stationed at Ikorodu and Ejinrin during market days, which were beyond even the arbitrary limits of what was considered protected territory.[2]

To extend the colony's control in the protectorate, in 1868, Glover introduced a crude form of indirect rule, which placed the responsibility for the maintenance of order in the hands of "elected chiefs" and a local native constabulary.[3] Local administration was also introduced wherever authorities could be found "capable of and willing to assist the government"; and - according to Glover -

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1-Turton to Glover, 13 Jan. 1873, G.P.; Denton to Knutsford, 7 Dec. 1889, CO 147/73. In October 1866, a District Magistrate was appointed to supervise the administration of what had become the "Lagos Protectorate", and to hear cases involving the local inhabitants. See, Blue Book for 1867, "Judicial Establishment", CO 151/5.

2- Lees to Berkeley, 26 Sept. 1873, and Payne to Lees, 26 Sept. 1873, enclosed, CO 147/28.

3- These "elected chiefs" were appointed by the Lagos government.

> without infringing the integrity of British law, we are adapting it by judicious administration to the wants and feelings of the people. 1

Glover's make-shift system of administration was not without some success, for in 1873 it was possible to dispense with the services of the District Magistrate, appointed in 1866, whose position had become more or less a sinecure. By then, his periodic visits to the protectorate had ceased, as in the event of any dispute of magnitude, the contending parties and the local chief were summoned to Lagos, where the complaint was brought before the settlement's courts. It was claimed by Administrator Berkeley, who took over from Glover, that "the decisions in most cases appear to give satisfaction to both sides."[2]

The jurisdictional expansion of Lagos to various places on the mainland was not affected without design. The Lagos authorities - and Glover in particular - were well aware of the fact that however reluctant the Colonial Office was at the time to extend its commitment at Lagos, jurisdiction was seldom relinquished once it had been acquired.[3] This awareness was illustrated in Glover's attempts to incorporate Porto Novo within the settlement's jurisdiction. After making various proposals for extending the settlement's boundaries to the town, all of which the Colonial Office rejected, Glover intrigued with the exiled Prince Dassi (later King Tofa) against the

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1- Glover to Kennedy, 5 Aug. 1869, in Kennedy to Granville, 14 Aug. 1869, CO 147/15.
2- Berkely to Hanley, 17 June 1873, CO 147/28.
3- See, Carnarvon's views in a dispatch to Strahan, 16 April, 1875. CO 96/112.

reigning monarch Mekpon.[1] One of the primary considerations demanded by Glover for Lagos support was the formation of a court presided over by the settlement's Chief Magistrate.[2]

Although unsuccessful in this instance, Glover's efforts, and those of the Lagos government, to extend British jurisdiction to the mainland by such means met with complete success; for in 1876 the de facto situation was recognised by defining the protected territories as "those areas where the Crown had acquired powers of jurisdiction."[3] Clearly, then, the Lagos protectorate had expanded to wherever the settlement's magistrates cared to tread.

The process by which the British settlements in West Africa expanded their sway over neighbouring peoples has been labelled "sub-imperialism" by a historian of this period.[4] As he rightly points out, there was little consistency in Britain's policy towards the acquisition of jurisdiction over African states along the coast. But it is possible to discern a rather steady change in the attitude towards the smaller African states with whom Britain was coming into contact. From the middle of the century, when the campaign against the slave trade moved from the sea to the coastlands of West Africa, there was a growing reluctance in official circles to treat with

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1- The political and economic aspects of these intrigues are discussed in Newbury, The Western Slave Coast, 90, Hargreaves, Prelude to the Partition, 119, and Aderibigbe, Expansion of the Lagos Protectorate, 48-52.

2- Yonge to Buckingham and Chandos, 30 Oct. 1867, and enclosures, CO 147/13.

3- By ordinance 3 of 1876, CO 97/2.

4- C.W. Newbury, The West African Commonwealth, London 1964, 5-19.

African states on the basis of equality. By the 1870's, this had become a full grown theory of extraterritorial jurisdiction based "on the assumption that no rival jurisdiction could be presumed to exist wherever local authority was classified as 'uncivilised'".[1] Therefore, although there was no "legal" right to extend British jurisdiction to places where none existed either by treaty or usage, the context of Anglo-African relations was no longer regarded within the scope of what was commonly meant by "international law". In short, African states had been relegated to the position of non-powers in their relations with Great Britain.

The legal distinction between settlement and protectorate at Lagos was an obscure one in the first two decades of British rule. Strictly speaking, the settlement was British territory in which the Crown exercised sovereign rights of jurisdiction; while in the protectorate, only that jurisdiction that had grown out of usage or been acquired by treaty could be legally exercised. In the one, English law and the laws enacted by the legislative council were in force and should have been administered; in the other, the customary law of indigenous African states was in force and should also have been administered.

It was inexpedient, however, to maintain this distinction, and perhaps even impossible,under the conditions that obtained in and around the settlement during these early years. To a large degree, this was on account of the existence of domestic slavery throughout

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1- Ibid.

this area. British claims to the territory west of the island of Lagos to the town of Badagry and east to Palma were based on the three cession treaties of 1861 and 1863.[1] This land, therefore, should have been regarded as British territory and administered as part of the settlement, at least until such a time as its status was altered. Because of the difficulties of applying English law where domestic slavery existed, however, the Colonial Office thought it best to "consider" as British territory only the island of Lagos, and the towns of Badagry, Palma and Leckie, retaining all else as protectorate.[2] Although no legal instrument sanctioned this definition, the Lagos authorities maintained this fictional distinction until after the turn of the century.[3]

There were other reasons for maintaining this obscurity. Where revenue was concerned, or regulatory measures enforced, it was impracticable to limit the scope of enactments to the settlement alone. In 1875, for example, an ordinance regulating the sale of spirits was applied not only to the island of Lagos and the towns of Badagry, Palma and Leckie, but the town of Arthur (on the sea-beach between Lagos and Palma) and the district of Ebute Metta to a radius of one mile from the landing place.[4] As well, the paucity of colonial

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1- That is, the treaties ceding Lagos, Palma and Leckie, and Badagry.
2- Cardwell to Blackall, 23 June 1866, CO 420/2.
3- See, for example, Pope Hennessey to Kimberley, 30 Dec. 1872, CO 147/24. For the views of various judicial officers on the eve of the amalgamation of northern and southern Nigeria see, C.P. 1005, Lugard to the Secretary of State, 30 June 1913, and enclosures, CO 879/113.
4- Ordinance 7 of 31 Dec. 1875, Sect. 3. CO 97/2.

officers in the settlement ruled out any effective establishment of English-type institutions in what should have been regarded as British territory. Even in the towns of Badagry, Palma and Leckie, African institutions functioned side by side with courts held by colonial officers.

While Lagos was part of the Gold Coast colony, the same spirit prevailed. Like the problem of land title, any attempt to define the extent of British territory at Lagos would have proved inconvenient, and with no pressure from either private or public sources, the authorities were content to allow the situation to remain undefined. Territorial expansion helped to complicate the picture even more. In 1884, Appa and Ogbo to the west of Badagry, and one year later Mahin to the east of Leckie were included in the protectorate, chiefly to stifle French and German activities in these areas.[1] As well, Katanu, just south of Porto Novo on the sea beach, and Mahin Beach were also brought under British control.[2] In these cases the motive was one of securing the colony's customs revenues, much in the same way that possession of Badagry, Palma and Leckie had earlier secured the port of Lagos' revenues. To extend the analogy, the declaration of a protectorate over Katanu, like the cession of Palma and Leckie in February 1863, was presented to the Colonial Office as a fait accompli. In fact, a Foreign Office dispatch instructing

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1- Treaties of 15 Mar. and 24 Dec. 1884, and 24 Oct. 1885, in Hertslet, Map of Africa, I, 99, 100, 102.
2- Treaties of 24 Sept. 1879, and 24 Oct. 1885, in Hertslet, Map of Africa, I, 67, 100.

the Governor not to take Katanu under protection arrived in Lagos less than a week after the treaty was signed.[1]

This did not mean that British administration was extended to the latter two places but not the former. The exercise of jurisdiction in the protectorate was wholly pragmatic and depended almost entirely on the convenience or necessity of having the place under immediate British rule. Katanu and Appa, though only protected territories, nevertheless were placed under the jurisdiction of the Lagos District Commissioner at first, and in 1886 within the western district.[2] Mahin Beach, on the other hand, though ceded to the Crown, was not placed within the jurisdiction of any of the colony's District Commissioners, and for all practical purposes it was regarded as protected territory rather than British soil.

Before 1880, law enforcement in the outlying portions of the protectorate was in the hands of local African chiefs. In the absence of a shallow draft steamer plying the waters of the lagoon and serving as a constant reminder of British might, there was no direct way for the government to enforce its authority at all. Instead, chiefs were granted stipends to police those areas which otherwise could not be kept under adequate surveillance. Through such indirect control, it was claimed that the numerous thefts and out-

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1- Minute by Hemming, 10 Nov. 1879, on Ussher to Hicks Beach, 29 Sept. 1879, CO 147/38.

2- Griffith to Stanley, 12 Aug. 1885, CO 96/167; Newbury, The Western Slave Coast, 77.

rages previously committed were largely being checked.[1] After 1880, the authority of local chiefs was supported by a government gunboat, which patrolled the waters of the lagoon. The gunboat also commanded a healthy respect from less friendly chiefs; and none were rash enough to test her prowess and risk bombardment of their towns, especially if, as in the case of Epe or Ikorodu, the town was accessible from the lagoon.[2]

Most of the time, interference in the affairs of the surrounding African states was discouraged. It was sufficiently difficult for the authorities to fulfil their obligations in and around the colony with only a skeleton force of officials at their disposal, and they were, therefore, content to maintain a neutral, though influential position vis a vis their smaller neighbours. There were, of course, exceptions to this: the District Commissioner of Leckie, for one, encouraged the people beyond his jurisdiction to avail themselves of his court in an appeal capacity from their own customary courts. But even here, the Lagos authorities, once apprised of what he was doing, warned against this practice.[3]

On the whole, however, official thinking along these lines did not radically differ from that of Glover's time. The distinction between colony and protectorate remained obscure, and obvious illegal-

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1- Moloney to Griffith, 21 Jan. 1881, CO 147/44.
2- See, for example, Griffith to Ussher, 22 May 1880, CO 147/41.
3- Evans to Griffith, 5 Dec. 1885, in Griffith to Stanley, 26 Dec. 1885, CO 96/168.

ities, arising from assumed jurisdiction, did not seem to bother anyone. Cases involving neither British subjects nor residents of the colony or protectorate were still tried in the colony's courts, though clearly beyond their jurisdiction. The courts, themselves, when aware of their lack of jurisdiction, were disinclined to pursue the cause;[1] but the executive, under constant pressure from commercial interests at Lagos, was more interested in affording protection to these interests than in the legality of their proceedings.

It was complained, for example, that the limitations imposed by strict interpretations of English law were being exploited by gangs of thieves who "lurked" outside the colony's boundaries and robbed within them, with impunity.[2] Merchants objected to the helplessness of the government because of the finer points of a law which they felt was not suited for the country and "by which in the majority of cases criminals escape justice, and honest people suffer".[3] The executive, therefore, did sanction illegal assumptions of jurisdiction and did pursue illegal courses of action. In one case, the conviction of two men for a murder committed at Itele - beyond the limits of the colony or protectorate - was recommended by the executive council to be set aside and free pardons granted to the prisoners. How-

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1- As a practising barrister at Lagos, W.B. Griffith defended a man at the Lagos Assizes accused of burglary at Porto Novo. Griffith pleaded no jurisdiction, and the court upheld the plea. See, W.B. Griffith, The Far Horizon, Ilfracombe 1951, 64.

2- The Lagos Observer, 23 Nov. 1882.

3- Petition of 31 Oct. 1882, in Griffith to Kimberley, 14 Dec. 1882, CO 147/52.

ever, because of the serious repercussions this might have had for law enforcement in the areas adjacent to the colony, the Governor intervened and requested the council to make their pardon conditional on the prisoners first serving sentences of twenty-five years.[1]

By the end of the 1880's, the distinction between colonial and protected territory at Lagos had become entirely academic. The intervening land along the coast between Badagry in the west and Leckie in the east was not now considered part of the colony. But although the colony's laws were not administered there, according to Chief Justice Smalman Smith,

> it is nevertheless a fact that even during the short period of my experience here the people have voluntarily through their chiefs and headmen brought down persons charged with crimes to be tried at Lagos and have submitted to the jurisdiction of this Court the decision of important questions affecting the title and boundaries to large tracts of land in these districts. 2

Furthermore, in order not to appear to shirk the responsibilities of jurisdiction, Smith often summoned the "White-Capped" chiefs of Lagos to court for their opinions on questions of land, in order to satisfy himself that the land in dispute was within the territory ceded by Dosunmu in 1861.[3]

The Supreme Court, therefore, exercised jurisdiction in areas which were inconvenient to recognise as British territory in practically the same way that it exercised jurisdiction at, say Badagry or

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1- Minutes of the Executive Councils of 10 Jan. and 31 Mar. 1876, CO 98/2.
2- Smith to Moloney, 2 Mar. 1886, in Moloney to Holland, 17 Aug. 1887, CO 147/60.
3- Ibid.

Leckie. The court's jurisdiction in 1886, according to Smith, fell into three groupings: the first included the islands of Lagos and Iddo where English law was in force and jurisdiction complete; the second comprised the entire seafront from Leckie to the western limit of the territory of Katanu, and the last included all other protected territory north of the lagoon. In the areas encompassed in the latter two groupings, including the colony portions of the eastern and western districts and Ebute Metta, jurisdiction was much less complete than at Lagos. In fact, according to Smith, only those matters which "their local chiefs regard as 'too big' for them to deal with are referred either through the nearest commissioner or otherwise direct to Lagos."[1]

The different jurisdictions exercised in various parts of the colony and protectorate were bound to produce anomalies. In some portions of the protectorate, the Supreme Court exercised a fuller jurisdiction than in parts considered British territory. Because of this, District Commissioners could never be sure of the extent to which their actions were legal in different areas in their own districts. There was no attempt in Lagos or London to clear up this situation. Governor Moloney, in a typically unclear dispatch, maintained that the jurisdiction of District Commissioners was limited to the towns of Badagry, Palma and Leckie and the adjacent lands that were properly part of these towns. But he also contended that

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1- Ibid.

their jurisdiction extended as well to outlying places "where the exercise of jurisdiction has been sanctioned by established usage or other means." What these territorial limits were Moloney would not say, nor did he see a pressing need for such a definition.[1]

For their part, members of the Colonial Office were not very disturbed either by the vagaries of British jurisdiction at Lagos. Augustus Hemming, representing its expansionist voice, did not really think it mattered whether some parts of Lagos were colony or protectorate or that jurisdiction in some areas remained unclear.[2] In defining what he considered to be protected territory, Hemming included all those places where African communities recognised British authority by bringing cases to the Lagos courts and where many of the chiefs were stipended to act as policemen.[3] Under such a definition, Britain's commitment around Lagos, if not the colony itself, could expand to wherever District Commissioners thought necessary or wherever African chiefs were willing to accept stipends from the Lagos government.

This was, in fact, the way Lagos had expanded from the original island and seafrontage ceded in 1861; and it was the method by which the colony continued to expand at the expense of the smaller African states to the east and north, at first, and later of the major powers of Yorubaland. But overall there was no uniformity in extending British jurisdiction, nor, for that matter, consistency on the principle

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1- Moloney to Smith, 13 August 1887, in ibid.
2- Minute by Hemming, 6 Oct. 1887, on Moloney to Holland, 5 Sept. 1887, CO 147/60.
3- Minute by Hemming, 16 Sept. 1886, on Moloney to Granville, 22 July 1886, CO 147/55.

of expansion itself. Instructions to the new District Commissioner of Badagry in 1888, for example, reminded him that before he attempted to exercise jurisdiction in any part of his district, he had first to satisfy himself "from the records of the Court and other former correspondence that it has been already there exercised."[1] Moreover, the Lagos government and the Colonial Office did not always agree to extend British jurisdiction over purely African affairs, even when this was offered by the indigenous authorities themselves.[2]

Nevertheless, in the same year that the District Commissioner of Badagry was cautioned against further expansion of his jurisdiction, the District Commissioner of Leckie was advised that "prudence and tact may admit of the advantageous extension of such jurisdiction" as he possessed, and that the Governor saw no difficulty in the extension of his jurisdiction "as far as and inclusive of Ode" to the east of Leckie. The commissioner was also advised that "summonses and warrants can without difficulty have operation"; however, in cases where attention is not paid to a summons or warrant, he was warned that further action should not be resorted to but a report forwarded to Headquarters.[3] As a general rule, the colony sought jurisdiction over the more serious crimes that were punishable by death under customary law, but jurisdiction over purely African matters was eschewed.

1- Higgins to Millson, 7 Mar. 1888, in Moloney to Holland, 20 Mar. 1888, CO 147/63.
2- See, for example, Denton to Chamberlain, 19 Dec. 1898, CO 147/136.
3- Acting Colonial Secretary to District Commissioner of the eastern district, 16 Jan. 1888, in Moloney to Holland, 10 Feb. 1888, CO 147/63.

The methods by which the colony continued to extend its jurisdiction in the protected territories became far more blatant in the 1880's. The cession of Mahin Beach in 1885 created an inconvenient gap on the seaboard between the eastern limit of the colony and the newly ceded territory. Although the towns in this area considered themselves under the protection and jurisdiction of Epe, itself part of the kingdom of Ijebu Ode,[1] this difficulty was got around by a straight show of force. Governor Moloney had a detachment of armed police occupy an island in the lagoon opposite Ibgobun - a town to the west of the western limits of Mahin Beach - and the British flag was hoisted. The chiefs of Isseh and Ode - towns in the disputed area - hastily accepted the Governor's offer of a £2 monthly stipend, which conferred on the colony what amounted to de jure recognition of British rights in the area. To complete the extension of jurisdiction over the remaining interspersed territory, Moloney intended that Epe's rights be bought off by an annual stipend of £100; but Lagos had to wait until 1892, after the defeat of the Ijebu Ode, before Epe's rights in the area were relinquished.[2]

Shows of force were always the most convenient mode of laying new claims to particular areas. The eastern lagoon, unlike the lagoon west of Lagos island, had over the years become a breeding ground for river piracy. The southern shore was either part of the colony

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1- Moloney to Holland, 21 Sept. 1887, and minutes of chief Josseh's answers enclosed, CO 147/60.
2- Moloney to Holland, 21 Sept. 1887, CO 147/60; CO to Moloney, 15 Dec. 1887, ibid.

or under British protection; but the northern shore remained under the jurisdiction of Ijebu Ode and its tributary states to the east, in particular Itebu. With the influence of both Ijebu Ode and Itebu in the wane, the eastern trade route to the interior was threatened at its base by bands of thieves and local chiefs bent on exerting their own authority. Chief Ojo of Artijere (in Itebu country) had been one of those quick to realise the potential of his strategic position on the lagoon. By establishing his own court at Artijere where the surrounding people brought their disputes, Ojo acquired considerable influence along the north shore and had, in effect, become independent of his former suzerain.[1]

The new situation presented a problem for the authorities at Lagos, who preferred responsibilities for law and order in the lagoon to be in as few hands as possible. Accordingly, when a robbery of some importance occurred near Artijere, Ojo was accused of committing it.[2] The District Commissioner of Leckie was dispatched immediately to the area with twenty armed police and a warrant from the Supreme Court for the chief's arrest. An attempt was made to seize him, which resulted in his being shot while escaping capture and his subsequent death from the wounds.[3]

Evidence later unearthed proved Ojo's innocence of the crime and also established that Artijere was not within the jurisdiction of the

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1- Denton to Knutsford, 28 Jan. 1890, CO 147/74.
2- Denton to Knutsford, 30 Aug. 1891, CO 147/81.
3- Denton to Knutsford, 13 Sept. 1891, CO 147/81.

Supreme Court. The warrant for Ojo's arrest was, therefore, illegal and should never have been issued in the first place. Still, the occupation of Artijere by the detachment of armed police continued.[1] Governor Carter's only observation on the injustice resulting from the illegal intervention was:

> I do not hesitate to say that the ordinary processes of the law are useless to cope with an affair like that at Artijere, and therefore the question cannot be considered from a legal standpoint.

If raids and outrages on the eastern lagoon were to be ended,

> strict legality according to British ideas must not be too carefully considered. 2

The sentiments expressed by Carter were subsequently used to justify all illegal acts of the colonial authorities toward African peoples beyond their jurisdiction. Whereas formerly some attempt had been made to cloak illegalities in a more respectable guise, from the time of Carter's administration even lip-service to the principle of law was discarded. For the future, if actions of the Lagos government were necessary from the government's point of view, this in itself justified the measures taken.

One year after the action at Artijere the authorities again callously overstepped their jurisdiction. An African trader of Epe, accused of extortion, was apprehended by the Lagos police and sent for trial in the colony's courts. As Epe was beyond the limits of

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1- Carter to Knutsford, 29 Sept. 1891, CO 147/81; CO to Carter, 9 Nov. 1891, ibid.

2- Carter to Knutsford, 31 Dec. 1891, CO 147/82. The armed police were removed from Artijere after Manuwa, King of Itebu, agreed to guarantee the peace of the lagoon around that town. Carter to Knutsford, 2 Nov. 1891, CO 147/82.

British jurisdiction, the courts would not try the case. Still, this did not deter Carter from adjudging the trader guilty of an offence and fining him £50, without any recourse to the courts.[1] No comment was forthcoming from the Colonial Office on this extraordinary procedure. The guiding principle as far as these matters went had been articulated in 1887 by Hemming: questions of jurisdiction were to be ignored "until some distinct and definite request is put to us on the subject." This situation was common to all British West African colonies and although "a dreadful thing" to "the judicial mind" this must be allowed to continue. "Certain things must be winked at which are perhaps outside the law", he had contended, unless Britain was "prepared to see the establishments costing a vast deal more than they do now."[2] And the Colonial Office was not prepared to see this happen.

Of course, jurisdiction was still being extended in the protectorate in the same way as it had been up to the 1880's. District Commissioners continued to encourage Africans residing outside their districts to bring their disputes to the colony's courts, and some even visited towns outside their jurisdiction, "advising" the people there that in future all cases should be referred to them.[3] In this way the precedent of Africans coming "voluntarily" before the colony's

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1- Carter to Knutsford, 15 July 1892, CO 147/85.
2- Minute by Hemming, 4 Nov. 1887, on Moloney to Holland, 21 Sept. 1887, CO 147/60.
3- See, for example, O.Smith to the Acting Colonial Secretary, 1 June 1888, in Moloney to Knutsford, 6 July 1888, CO 147/64.

courts was established and jurisdiction could later be claimed on grounds of custom and usage.

The establishment of jurisdiction in the protected territories did not mean that Britain was sovereign in these places. Hitherto, the Austinian doctrine of the indivisibility of sovereignty had obtained in international law, but the expansion of European interests in most parts of Africa had forced a new concept of sovereignty to emerge. The de facto situation, with a division of sovereignty between African and European powers, was recognised and accepted. At Lagos, this meant that Britain could assume the responsibility in African states in the protectorate for foreign relations and the administration of justice where it affected non-natives, without Britain becoming responsible for all functions of government. In this way, the existence of domestic slavery, for one, would present no problem and could be tolerated, even after the laws of the colony had been extended to these protected areas. In fact, the laws of Lagos were applied to parts of the protectorate in 1891, although it was not the government's intention to interfere more than was absolutely necessary with local African administration.[1]

Until 1892, the expansion of the colony's jurisdiction was limited to the smaller African states bordering the lagoon and those between Lagos and the major powers of Yorubaland. Britain had no rights of jurisdiction in Ijebu Ode or Egbaland, and none in any of

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1- The laws of the Colony were applied to the kingdoms of Addo, Igbessa and Ilaro on 28 August 1891 by an Order made under the Foreign Jurisdiction Ordinance of 1890. Denton to Knutsford, 29 August 1891, CO 147/81.

the states immediately to the north of them. Representatives of the Lagos government had not at times been allowed into Ijebu Ode or Abeokuta, and both of these states, commanding the inland trade routes, were able to exert considerable economic pressure on the colony when differences arose.

By the 1890's, the idea of treating with Africans on equal terms was totally incompatible with the interests of European powers. For Britain, as well as France and Germany, force was becoming an active ingredient in securing her policies in Africa. Using the closing of the trade routes through Egbaland and Ijebu as an excuse, Governor Carter organised an expeditionary force against Ijebu early in 1892 - the first organised expedition from Lagos since Glover's action against the Egba in 1865. Ijebu was attacked and shortly overpowered, and its capital, Ode, entered.[1] The repercussions of the British victory resounded throughout the interior: within months, the Egba had re-opened the Ogun river to trade and invited Governor Carter to Abeokuta to compose the differences that existed between them and Lagos;[2] within a year, treaties of friendship and commerce had been signed with the Egba and the foremost powers of Yorubaland, Ibadan and Oyo.[3]

The chastisement of Ijebu was a lesson that was not lost on the other African states in the interior. Resistance to British demands

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1- For more details on the Ijebu expedition, see, O.O. Ayantuga, Ijebu and Its Neighbours, London, Ph.D., 1965, 284-86, and, Aderibigbe, Expansion of the Lagos Protectorate, 219-21.

2- Newbury, The Western Slave Coast, 138.

3- The Alafin of Oyo actually signed for both Oyo and Ibadan, and the latter acceded to the treaty six months later. Treaties of 18 Jan. 1893 and 3 Feb. 1893, and Agreement of 15 August 1893.

in the Lagos hinterland had proved futile and was not to be attempted again. But there still remained scope for negotiation between African states and Lagos, although behind all future negotiations was the memory of the expeditionary force of 1892, and the knowledge that Britain, as a last resort, could force the situation by power alone. Within these limitations, however, Africans and British alike realised that more could be gained through cooperation than force. Britain might be able to afford military expeditions to the interior, but in the end Africans alone would have to administer these places. And in order to maintain peaceful conditions conducive to the advancement of commerce, the African authorities would have to be left with sufficient power to rule their own subjects. British interests, therefore, dictated that future confrontations with African states had to be peaceful, and that in purely African matters traditional rulers had to be allowed to make the decisions and had to be supported in their decisions. Except when they proved intransigent toward British policies, Britain would not interfere in the mechanics of African governments; and Africans were quick to realise that as long as they remained amenable to British attitudes they would remain secure in their positions.

Of course, there was little room for Ijebu Ode to manoeuvre after its defeat in 1892. Britain demanded and was ceded portions of Ijebu on the northern shore of the lagoon, including the town of Epe.[1] And although the remainder of Ijebu continued to be nominally

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1- Cession treaties of 6 July 1892.

under the Awujale's jurisdiction, only British support maintained his position there, and he was henceforth in most respects merely a puppet of the Lagos government. This can been in the erosion of the Awujale's judicial prerogative immediately after the defeat. At first, cases coming before him were heard in the presence of a Travelling Commissioner (appointed in May 1892) who could refer cases meriting special notice or demanding a capital punishment to the Governor of Lagos.[1] Later, it became the practice of the officer in charge of the armed police stationed at Ijebu Ode after 1892, to hear and decide cases brought before him by the people of Ode. This officer had been issued with no instructions concerning the laws and customs of Ijebu, nor any instructions regulating his own authority. He claimed that as far as he knew he was supreme there and excepting in matters calling for capital punishment, his powers were practically unlimited.[2]

The lack of regulated spheres of jurisdiction went so far that even agents of the Church Missionary Society held their own court. Acting Governor Denton reported that they

> had been in the habit of settling disputes and hearing cases in which their people (Christians) were concerned and that in some instances the subordinate agents, when they found that a matter was of too serious a character for them to deal with, had taken it to the Principal Agent. 3

Denton reminded the Awujale that he and his chiefs alone were compet-

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1- Blue Book for 1892, CO 151/30; Denton to Ripon, 30 Sept. 1893, CO 147/90.
2- Mitchell to the Colonial Secretary, 21 Dec. 1896, in Stallard to Chamberlain, 19 Jan. 1897, CO 147/112.
3- Denton to Chamberlain, 3 April, 1899, CO 147/142.

ent to hear and determine cases involving his people.[1] But there was little that the Ijebu authorities could do to counteract these incursions into their prerogative. Although protests against this usurpation of jurisdiction could be made, the authorities depended for their positions on the support of the Lagos government and were forced to accept its dictates. The proximity of Ijebu to the island of Lagos and the fact that Ode was already garrisoned by armed police ruled out anything resembling independence of action, even should this have been contemplated.

As it happened, jurisdictional difficulties were not resolved in Ijebu until 1908 when a "Judicial Agreement" between Lagos and the Awujale was signed. But some time before that, it had already become clear that the garrison at Ode was the supreme authority in Ijebu in most matters. It was possible in 1905, for example, for a sergeant of the armed police to arrest peremptorily a muslim priest and eight co-religionists in their mosque at Ode and imprison them at Epe, where they were forced to do hard labour even before the charges against them were heard in court.[2]

While jurisdiction in Ijebu itself remained irregular until 1908, in the ceded territory along the northern shore of the lagoon, the laws of the colony were in force from the outset.[3] The ceded territory was made into a district - called the district of Epe - with a

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1- Ibid.

2- Letter by "Janus", in The Lagos Standard, 13 Dec. 1905. When the matter was investigated by Captain Neal of the constabulary, he deemed the charges against the prisoners unfounded and had them released.

3- In December 1892, the laws of Lagos were extended to the district of Epe by Executive Order.

commissioner and a token force of Lagos constables resident there. A District Commissioner Court was established, sitting daily at Epe and hearing civil and criminal cases. In 1899, just over one hundred criminal cases were brought before the court, most of which involved petty larceny or simple assault. Crimes of a more serious nature were rare - a circumstance perhaps attributable to the large muslim population of the town.[1] In civil matters, most actions brought to the attention of the District Commissioner were for seduction or breach of betrothal vows. There was no attempt to apply English law in such cases, as the customary law was clear and could be applied without difficulty.[2]

As was true with the colony's other districts, effective administration depended largely on the quality of the individual commissioners assigned to the district. In this respect, Epe was no more fortunate than Badagry and Leckie. One commissioner, E. Nundy, first appointed in 1894, proved inadequate in both judicial and political capacities. In the first half of 1896, Chief Justice Rayner had to quash seven of his convictions for technical reasons that could easily have been avoided. Nundy was also unable to control the political situation at Epe. On one occasion, he had to refuse to execute a warrant from the District Commissioner of Leckie for the arrest of an Epe man, because the man was highly regarded at Epe and his arrest would have created a commotion in the town.[3] Overall,

1- See, for example, Annual Reports for 1899, p. 120, CO 149/5; Annual Reports for 1905, p.17, CO 149/5.
2- Annual Reports for 1899, p.120, CO 149/5; Hornby-Porter to the Colonial Secretary, 16 Aug. 1899, in Macgregor to Chmberlain, 6 Oct. 1899, CO 147/144.
3- Rayner to Griffith, 27 July 1899, in Griffith to Chamberlain, 31 July 1896, CO 147/105.

the new district was poorly administered, and the peaceful conditions that existed there were mainly the result of the continuation of indigenous authority, despite its colonial status.

At about this same time, a strip of land to the west of Epe, including the important market town of Ikorodu, was ceded to Britain by the newly constituted authorities of Ijebu Remo.[1] The new district of Ikorodu, as it came to be called, also included the entirety of Ijebu Remo, which was proclaimed to be under the protection of the Crown in November, 1894. An Executive Order the following year applied the laws of the colony to Remo as a whole, thus placing it on virtually the same basis as the ceded district of Ikorodu.[2] The two centres of administration of this rather large area became Ikorodu in the south and Shagamu further inland; but even with detachments of armed police at both places, it proved impossible to rule the area with any degree of success. This was chiefly because the establishment of British centres of administration at Ikorodu and Shagamu (the capital of Remo) had greatly weakened the authority of the indigenous rulers; and although commissioners endeavoured to support and prop-up chiefly authority, the people of Remo refused to obey them now that most of their independent power was gone. Commissioners had often to overlook malpractices on the part of constituted authorities because of the consequences of reprimanding them. In

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1- Cession treaty of 4 Aug. 1894. A good discussion of the separation of Ijebu Remo from Ijebu Ode can be found in Ayantuga, Ijebu and Its Neighbours, 302-09.

2- Proclamation of 12 Nov. 1894; and Order of 11 April 1895.

one instance, charges of a serious nature were dropped against a chief in order to avoid loss of his authority; instead, a palaver was held between the District Commissioner and the chiefs of the area, which resulted in the offending chief being fined £2. By the end of the century, the district was practically in a state of lawlessness.

District Commissioner Courts were established in Remo at both Ikorodu and Shagamu. In 1899, the number of criminal cases heard by these courts amounted to two hundred and thirty six, but in the last quarter of that year alone, the figure was almost one hundred.[1] There were many cases of violent assault, and three cases of manslaughter during this one year period.[2] Some attempt was made to hold back the rising tide of crime in Remo by improving the efficiency of the Lagos police stationed there; constables were provided with bicycles, which they now used in pursuit of criminals. This had some success, as the following year, only a slight increase in the number of criminal cases is recorded, and by 1904, the trend had noticeably been reversed in the north.[3]

Like the experience at Epe, civil cases brought before the District Commissioner involved mainly seduction and breach of marriage contract. Although many of these cases were being sent back to the chiefs for their decision, and District Commissioners "upheld the

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1- Annual Report for 1899, p.45, CO 149/5; Quarterly Report, in Macgregor to Chamberlain, 5 Feb. 1900, CO 147/148.
2- Ibid.
3- Ibid.; Macgregor to Chamberlain, 10 Jan. 1901, CO 147/154. There were 255 criminal cases brought before the court in 1900; see, Annual Report for 1901, p. 226, CO 149/5; Annual Report for 1904, p. 81, CO 149/5.

practice of the native courts in all cases involving native customs", chiefly authority was on the wane and this compelled commissioners to intervene judicially in what otherwise was purely of African concern.[1]

As well, the problem of unsuitable men discharging the duties of District Commissioners complicated the already existing difficulties of administering the district. In the first place, District Commissioners too often did not have sufficient jurisdiction to impress upon the people their own authority. They were not competent in land matters, for example, and whenever problems arose concerning land they were helpless to intervene - a serious compromise of their delicate positions. More important, they were seldom interested in their positions or qualified for their responsibilities. It proved quite easy at times for Africans to use them in settling their own disputes. One particularly serious example of this occurred in 1896. The Balogun and chiefs of Ikorodu informed the acting District Commissioner - Captain Gordon - that a nearby town housed a band of thieves who had been pillaging Ikorodu. The truth was that the chief of the town, Muse, had been contending the jurisdiction of the Balogun over his town, causing enmity between himself and the authorities at Ikorodu. There were no bands of thieves housed in the town - the information having been maliciously inspired - but Gordon, acting on the Balogun's complaint, had the town burnt to the ground in

1- Quarterly Report of District Commissioner, W.J. Douglass, in Macgregor to Chamberlain, 10 Jan. 1901, CO 147/154.

a singular show of poor judgement. He was later dismissed from the service for his indiscreet actions.[1]

The experience at Ijebu Ode and Ijebu Remo - particularly the latter - was directly responsible for the colony's attitude and relationships towards other African states further in the interior. British presence in these areas had had the unfortunate result of destroying or at least weakening the authority of indigenous rulers. The Lagos government had endeavoured from the start to leave local affairs in the hands of African chiefs; however, with the breakdown in chiefly authority, traditional practices could no longer be enforced. Marriage and betrothal customs could not be regulated, and seduction or adultery, though formerly serious offences under customary law, could no longer be punished by impotent chiefs, denuded of their traditional authority. The situation had become so critical in Remo that the leading chiefs petitioned the Lagos government to have regulations passed allowing monetary sanctions against those who infringed these indigenous customs.[2]

The state of virtual anarchy that obtained in Ijebu Remo after 1895 lent positive evidence to the views of those who feared a total breakdown af law and order in the wake of further British intrusions into the prerogatives of local African authorities. The colony could not afford a complete network of European officers to admin-

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1- Rohrweger to Chamberlain, 6 Oct. 1896, and enclosures, CO 147/106. Muse later sued Gordon for damages and was awarded £150; by then, however, Gordon had left the colony, and Muse most likely never collected his award; see, McCallum to Chamberlain, 27 May 1897, CO 147/114.

2- Petition to District Commissioner Douglass, in Macgregor to Chamberlain, 24 Nov. 1899, CO 147/145.

ister the public affairs of African states, and Britain's choice was, therefore, narrowed to employing local authorities as instruments of policy. As it was also desirable to maintain existing lines of command among the Africans themselves, support had to be given to the authority of "Paramount chiefs", which meant checking the tendency of subject villages and towns to break away from the higher authority.[1]

It was to this problem of shoring up the waning power of chiefs at the turn of the century, that Governor William Macgregor, addressed himself. This he began by placing the weight of the Lagos government behind traditional authority, formally recognising it where it existed and re-establishing it on a sound footing where it had disappeared. African councils were organised or formally institutionalised and were made "responsible for the preservation of peace, the administration of justice and the protection and encouragement of trade and industry." The principal or ruling chief of the area was to be President of the council, and "representatives" of the Lagos government would "assist" at all council meetings.[2] In effect, the Native Councils Ordinance which established these councils defined by law the position of chiefs and their councils, and so gave them "a recognised and assured position in the new order of things".[3]

1- Macgregor to Chamberlain, 15 July 1901, CO 147/156.
2- Ordinance 15 of 4 Nov. 1901, CO 148/2. Also established by this Ordinance was a "Central Native Council", which considered questions relating to the "good government and well being" of the native population. It was purely an advisory body, without any legislative power.
3- Aderibigbe, Expansion of the Lagos Protectorate, 348.

The places to which Macgregor's legislation was applied extended throughout the Lagos protectorate and in most parts of Yorubaland. This had become legally possible under the auspices of the Lagos Protectorate Order-in-Council of 1901,[1] which recognised the powers and jurisdiction acquired by Britain over the years in the various treaties signed with African states before and after the defeat of Ijebu Ode.[2] By themselves, these treaties (and declarations) conferred no powers or jurisdiction; but while promising independence and protection, their vagueness planted the very seeds for an eventual take-over. This was hardly the result of inept diplomacy on the part of African states. Africans were caught-up in the radical changes that took place in the concept of protectorates in the 1890's. Whereas formerly African states had retained all rights not granted to the protecting power, by 1898 African states had only that jurisdiction which the protecting power allowed them to exercise, and those rights specifically secured by treaties. Britain's views had gradually become aligned with those of France and Germany, which held that the existence of protectorates in "uncivilised" countries imparted rights to assume whatever jurisdiction was necessary for the "effectual exercise" of that protectorate. This concept was later extended to include protection of Britain of "the natives from

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1- Order-in-Council of 24 July 1901, in Hertslet, Commercial Treaties, XXIII, 246.

2- See, for example, Declaration of Independence and Non-Cession of 22 May 1888 with Ife; Declaration of Non-Cession of 23 July 1888, and Treaty of Friendship and Commerce of 3 Feb. 1893 with Oyo; Accession to the Oyo Treaty of 3 Feb. 1893 with Ibadan (15 Aug.1893); and Treaty of Friendship and Commerce of 18 Jan.1893, with Egbaland.

the grosser forms of ill-treatment and oppression by their rulers".[1]

Under these new conditions, Africans were powerless to stop the steady erosion of their own jurisdiction, which started with the minor adjustments foisted upon them by Macgregor and ended with the abrogation of all independent action. The pace with which this was accomplished depended largely on individual African leaders and the adeptness with which they guarded their vital rights against the inexorable tide that was sweeping forth from the south. The Egba, for example, understood these changing concepts well. The pretext used to justify the expedition against Ijebu Ode, that is the infringement of a treaty made with Lagos,[2] could as easily have been applied to the Egba themselves and with the same results. When, therefore, Governor Carter threatened to act in a similar manner after they had temporised about re-opening the trade routes, the Egba quickly reversed their stand and gave in to his demands. The treaty subsequently negotiated with Lagos, however, showed how well the Egba could gauge the Lagos government's desire to avoid another conflict so soon after the Ijebu expedition. Carter was forced to insert a clause in the treaty guaranteeing Egba independence, while expunging his original demands for a British resident at Abeokuta

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1- S.M. Tamuno, The Development of British Administrative Control in Southern Nigeria,* London, Ph.D., 1962. See also, S.E. Crowe, The Berlin West African Conference, 1884-1885, London 1942, Chapter VI.

2- Aderibigbe, Expansion of the Lagos Protectorate, 203-08, and Ayantuga, Ijebu and Its Neighbours, 266-78, show conclusively that the Treaty between Lagos and Ijebu Ode was not signed by the Ijebu delegation, and was immediately disavowed by the authorities at Ode when they became aware of it.

* 1900-12, 51-2.

and permission to construct a railroad through Egbaland.[1]

The treaty of 1893 was in the circumstances a formidable piece of diplomacy on Abeokuta's part, and it alone preserved a semblance of Egba independence for the next twenty years. Yet even with these concessions, the treaty possessed the germ for future Lagos interference and the eventual abrogation of those rights seemingly secured by it. Provisions in the treaty for the protection of missionaries, for the reference of all disputes between Abeokuta and other African states to Lagos, and for the need of the Governor's approval before the trade routes could be closed by the Egba all helped to undermine the Egba's independence of action. Indeed, the clause requiring the Governor's approval before the roads through Egbaland could be closed removed the most important weapon in the Egba's diplomatic arsenal. Without this lever, it was no longer possible for Abeokuta to resist British demands, since any attempt to apply pressure by closing the trade routes would have infringed the treaty and been used as an excuse for some form of military action. The Egba, therefore, had to rely on the limited means at their disposal to guard the rights secured in the treaty, trusting that Britain would honour its part of the bargain.

Britain, of course, had no intention of allowing the Egba to maintain an independent existence in any true sense of the term. It was only a matter of time before British interests would come into

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1- Aderibigbe, Expansion of the Lagos Protectorate, 242-243, 246a; Treaty of 18 Jan. 1893.

conflict with Egba guarantees, and when this occurred, the Egba would be forced to make further concessions. This can be seen in the negotiations at the end of 1898 over the rights of the Lagos railroad through Egbaland. Although permission for this had earlier been refused by the Egba authorities, the treaty of 1893 which had bound them to foster and promote trade and industry, was now used to gain the railroad right of way. At the same time, the colonial authorities also considered it essential to secure jurisdiction over the railroad and those who would work on it.[1] To effect this, concessions from the Egba granting jurisdiction over the offences committed against the railroad were needed.[2]

At first, the Egba refused to grant the desired jurisdiction; but subsequent threats by the Lagos government and the promise of an annual payment for the concession forced a change of heart. In February 1899, the jurisdictional agreement was signed.[3] By its provisions, the agreement secured for Britain virtual sovereignty over a one-hundred yard strip of land either side of the line: the Lagos government could apprehend and try and, if found guilty, punish "any person" in any part of Egbaland who had committed an offence against the railroad's laws in this area; moreover, the Alake and the Egba authorities undertook to deliver such offenders to the Lagos government, and for this, rather than the concession of land and sovereignty,

1- Denton to Chamberlain, 14 Sept. 1898, CO 147/135.
2- Ibid.
3- Denton to Chamberlain, "Telegram", 14 Jan. 1899, Denton to Chamberlain, 26 Jan. 1899, and Denton to Chamberlain, "Telegram", 23 Feb. 1899, CO 147/141.

the Egba were to receive payment of £200 a year.[1]

The railroad agreement of 1899 secured a major British interest in the interior; direct communication with the African states north of Egbaland and Ijebu had finally been achieved. But expanding commercial interests needed further concessions involving jurisdiction over non-natives of Egbaland, and over the administration of justice there; the first to ensure British justice for Europeans, and the latter to promote conditions in which commerce could flourish. Control over the administration of justice was, of course, in the hands of the Egba government, and constituting, as it did, one of the essential aspects of sovereignty and independence was, seemingly, secured to the indigenous authorities by the treaty of 1893. But the provisions of the treaty, as construed by the Lagos government, made independent action, even in local affairs, subject to the tacit approval of the colonial authorities. Any measure to which the Lagos government took exception could be regarded as a violation of the spirit, if not the letter, of the treaty.

The breach was, therefore, wide open for interference in almost every aspect of local affairs in Egbaland. In the first instance, it allowed Governor Carter to reorganise the structure of the Egba government in 1894 and later Governor McCallum to consolidate Egba ener-

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1- Agreement of 21 Feb. 1899, in Denton to Chamberlain, 24 Feb. 1899, CO 147/141. The agreement was to be in force for a period of 99 years. At first the Colonial Office sought to have the agreement in perpetuity, but when the Egba baulked at this, it was not pressed. It was not thought too important, as it was realised that "at the end of 99 years there will hardly be an Egba government to claim the reversion of land". See, minute by Antrobus, 11 Feb. 1899, on Denton to Chamberlain, "Telegram", 9 Feb.1899, CO 147/141.

gies in one council and organise a more equitable distribution of the state's revenue.[1] The railroad agreement of 1899 and the steady encroachments of the Railway Commissioner residing in Egbaland practically completed Lagos' ascendancy over the indigenous authorities; and Macgregor's support for the Alake in 1901 against his recalcitrant chiefs ensured that the Egba government - now dependent upon Lagos support - would in the future act only in a subservient capacity.[2] By then, the Railway Commissioner, A. Ehrhardt, was able to impose his will on the Alake and his council, with almost no possibility of their refusing. For example, one of the chiefs of Abeokuta, the Oluwo, had a thief strangled on his authority, with the consent of the powerful Ogboni society. Learning of the incident, Ehrhardt "suggested" that the Oluwo be imprisoned, and a new head of his township - Ilawo - be chosen. As for the Ogboni, he recommended that those implicated be fined £100 each. To both suggestions, the Alake and his council agreed.[3]

Even before the Lagos Protectorate Order-in-Council bestowed an air of legality on the interference in Egbaland, Ehrhardt and Macgregor had already forced the adoption of certain procedures by the Egba government for the regulation of judicial matters. These measures called for a delimitation of jurisdiction within the Egba state itself between local Apenas (judges) and the Alake's council, allott-

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1- Aderibigbe, Expansion of the Lagos Protectorate, 329-333.
2- Macgregor to Chamberlain, 19 July 1901, and enclosures, CO 147/156.
3- Ehrhardt to the Colonial Secretary, 5 July 1901, and Adepegba to Allen, 11 July 1901, in Macgregor to Chamberlain, 19 July 1901, CO 147/156.

ing to the former jurisdiction to fine up to £1 and to imprison for not more than one week. Records were to be kept by the Apenas, who were to send weekly returns of cases to the Oshila, the minister of justice on the council. The latter in turn would be responsible to the Alake himself, and he was to keep the Railway Commissioner informed of all serious cases brought before the council, and take no steps in such cases before the commissioner was consulted.[1] Because of the serious nature of the recent actions by the Oluwo, it was also agreed "that no person shall be put to death save on warrant signed by the Alake in Council."[2]

In the meantime, jurisdiction over non-natives in Egbaland had still to be acquired. At the turn of the century, British jurisdiction over aliens in Egbaland was limited to the provisions contained in the railroad agreement of 1899, and another agreement signed the following year, which granted a similar jurisdiction in a small area called Oloke Meji, where the Railway Commissioner resided.[3] To improve this, Macgregor endeavoured to obtain from the authorities at Abeokuta the right to have all cases affecting Europeans tried by the Chief Justice of Lagos or a mixed court comprising representatives of Lagos and the Egba sitting together.[4] At first, the Alake would only agree to grant the Crown limited juris-

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1- Ehrhardt to the Colonial Secretary, 5 July 1901, in ibid.
2- Ibid.
3- Agreement of 17 Dec. 1900.
4- Macgregor to Chamberlain, 25 April, 1903, CO 147/165.

diction over non-natives in indictable offences and in civil matters where the amount in question was at least £250.[1] At length, after some pressure was brought to bear on the Egba authorities, an agreement was signed, which in fact secured substantial concessions. By the provisions of the Judicial Agreement of 1904, Britain was granted the right to hear and determine cases involving non-natives of Egbaland, African or European, accused of indictable crimes under English law; all cases of manslaughter or murder; and civil actions involving £50 or more, in which one of the parties to the suit was not a native of Egbaland.[2]

In addition, a mixed court, consisting of a President appointed by the Lagos government and two other members appointed by the Egba council, was established. The mixed court was to have a summary jurisdiction in all non-indictable crimes involving non-natives, and in civil matters where the sum involved was less than £50 and one of the parties to the suit was not a native of Egbaland. The court was to be guided by the laws of Lagos, and its punishments or penalties were not to exceed those within the jurisdiction of the Lagos District Commissioner . Verdicts would be reached by majority decision; however, Britain had the right to hear and decide all appeals from the court in criminal cases on questions of fact and law, and in civil cases where the amount awarded by the court was £5 or more in money

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1- The Alake to Macgregor, 3 June 1903, in Macgregor to Chamberlain, 9 June 1903, CO 147/166.
2- Judicial Agreement of 13 Jan. 1904.

or property.[1]

Although it seems that much influence was brought to bear on the Egba authorities to sign the Judicial Agreement of 1904, it is difficult to imagine the Egba, at this time, refusing to concede its most important provisions. In fact, it is not unreasonable to doubt the authenticity of the Alake's initial proposals in the light of what he eventually agreed to; and it is conceivable that the first offer tendered to the British was for Egba consumption alone. This is somewhat borne out by the "controversy" over the agreement that immediately followed its implementation. This occurred six months after the signing of the agreement when 'The Supreme Court of The Colony of Lagos at Abeokuta" was officially opened. There was an immediate outcry in Abeokuta, followed by an official protest by the authorities on the grounds that the agreement of 1904 provided for a court consisting of the judge of the Lagos Supreme Court and at least four Egba assessors, not the Lagos Supreme Court itself. According to the Alake, there had been no intention to grant jurisdiction to the Lagos Supreme Court; what had been intended was a mixed jurisdiction in all crimes and civil matters, petty or otherwise. It was further claimed that during the discussions leading to the agreement the Alake had suggested that the court be styled "The Higher Mixed Court", and it was expected that the Lagos judge would merely offic-

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1- Ibid. A good discussion of the Judicial Agreement signed by the Egba, can be found in E. Baillard, La Politique Indigene de l' Angleterre en Afrique Occidental, Paris 1912, Chapter XVIII.

iate in an extra-judicial capacity.[1]

The objections raised by the Alake to the implementation of the Judicial Agreement were spurious and designed most probably to assuage the public outcry that followed the announcement of the opening of the Lagos Supreme Court. In the first place, the Egba authorities were well aware of what they were conceding in the Judicial Agreement, and how that jurisdiction would have to be exercised. There was no lack of information in Abeokuta with regard to judicial procedures, nor of informed "Saros", either working for the Alake or present in the capital. Furthermore, the agreement provided for majority decisions in the lower mixed court, and if this had also been the intention for the higher court, it is odd that no provision was made for it. As for the Lagos judge acting only in an extra-judicial capacity, merely officiating between the members of the court, there can be no question but that the Egba knew the Lagos judge would act in the same capacity as he did in Lagos. The Alake could not have been unaware of the position of assessors in colonial courts, and if it had been intended to relegate the Lagos judge to the role of onlooker alone, the treaty itself would have been devoid of reason. The Egba were not novices when it came to diplomacy; they had proved this for half a century in their relations with the Lagos government. They realised fully the implications of what they signed in January 1904, and these objections, raised after a public demonstration agains

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1- Edun to the Railroad Commissioner, 1 Aug. 1904, and the Alake to Moseley, 13 Sept. 1904, in Egerton to Lyttleton, 29 Oct. 1904, CO 147/171.

the agreement, were meant for the ears of the Egba critics alone, in order to maintain some semblance of the fiction that the Alake and his council still retained independence of action.[1]

The spread of British jurisdiction elsewhere in Yorubaland resembled to a large extent the efforts to expand jurisdiction at Abeokuta. It began with Governor Carter's tour of the interior in 1893, which resulted in treaties of "Friendship and Commerce" with Oyo and Ibadan, and ended, as in the case of Abeokuta, with Judicial Agreements in 1904. As a result of the treaties of "Friendship and Commerce", a representative of the Lagos government, diplomatically called a Resident, and a small force of armed police, were placed strategically between Oyo and Ibadan to ensure that the terms of the treaty were not violated. It was impossible, however, to prevent Residents or Travelling Commissioners from encroaching on the prerogatives of local authorities, and this in turn led to an ambiguous situation which called for some overt act defining once and for all the relationship of the Yoruba states with the Lagos government.

It was not long before such a definitive act was made. Less than two years after the signing of the "Friendship and Commerce" treaties, the Lagos Resident, Captain Bower, and a force of armed police marched to Oyo and presented the Alafin with an ultimatum. A disturbance ensued on his arrival in Oyo, and an unconditional

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1- The Alake's "objections" were withdrawn one month later after the new Governor, W. Egerton, assured him that the introduction and administration of English law through the Supreme Court would not be realised under the Judicial Agreement. Egerton to Lyttleton, 21 Jan. 1905, and enclosures, CO 147/174.

apology was demanded of the Alafin - an impossible condition, given the semi-divine nature of the Alafin to the Yoruba people. Subsequently, the Alafin's palace and parts of Oyo were bombarded, and the apology tendered.[1]

The bombardment of Oyo had practically the same effect on the states of Yorubaland as the defeat of Ijebu Ode in 1892 had upon that state and Abeokuta. The Alafin's unprecedented apology considerably weakened his authority, causing some of the smaller Yoruba states to renounce their allegiance to Oyo and the suzerainty of the Alafin. As in Ijebu and Egbaland, the Lagos government was forced to intercede in the internal affairs of these states in order to shore-up the very authority they had helped to destroy. At Oyo, for example, the Alafin and his council never recovered their former position, and they had to work closely with the British Resident in all matters of government. By 1901, they were not even allowed to apply sanctions in certain criminal cases which they themselves had tried.[2]

For the most part, jurisdiction in local affairs remained vague and tenuous; in dealing with African states, further definition was not thought necessary. But jurisdiction over non-natives of Yorubaland could not be left either vague or tenuous, and had to be acquired in some legal form. As in the case of Abeokuta, the treaties of 1893 did grant some jurisdiction to Britain by providing that "should

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1- This incident is treated in more detail by Burns, History of Nigeria, 206-07.
2- Macgregor to Chamberlain, 21 May 1901, CO 147/155.

any difference or dispute accidentally arise between us (in this case Oyo) and the said subjects of the Queen, it shall be referred to the Governor of Lagos for the time being, whose decisions shall be final and binding upon us all."[1] But nothing had been done to implement this provision, since few British subjects had any business in Yorubaland until the turn of the century. With the advancement of the railroad into Yorubaland, it became essential for Britain to obtain wider powers, not only over British subjects but over all non-natives of Yorubaland. Governor Macgregor candidly confessed at the end of 1903

> that up to the present time it has been held that Lagos Courts possess no jurisdiction in, for example, Ibadan, Oyo, Ilesha, Ekiti, Ondon, Akure, and Idanre. No jurisdiction has been established there by force; none has been ceded; and no jurisdiction has grown up by use or custom.

As for the machinery of justice in these places, he admitted that

> All trials are held there, and all sentences are imposed, in the name of the native authorities and with their concurrence, whether the native courts sit alone or assisted by a Resident or Travelling Commissioner. 2

A more regular judicial basis had to be provided, and this was accomplished in 1904 by Judicial Agreements with Oyo, Ibadan and Ife.[3] Like the one negotiated with Abeokuta in January 1904, the agreements provided for the exercise of jurisdiction by Britain in Yorubaland; but unlike the Egba agreement, there was no cession of jurisdiction

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1- Treaty of 3 Feb. 1893 with Oyo.
2- Macgregor to Lyttleton, 15 Dec. 1903, CO 147/167.
3- Agreements of 16 Aug. 1904, 8 Aug. 1904 and 23 Sept. 1904.

to the Crown. The Lagos government had been instructed not to duplicate the position that obtained vis-a-vis Abeokuta, that is, not to recognise indirectly the independence of the Yoruba states by allowing them to cede a jurisdiction that the Colonial Office had no intention of recognising as theirs.[1] By the agreements, Oyo, Ibadan and Ife acknowledged that Britain possessed jurisdiction over all non-natives in criminal matters; jurisdiction in civil suits where at least one of the parties to the suit was not a native of the country; jurisdiction for the administration and control of the property and persons of all non-natives; and jurisdiction over all cases of murder and manslaughter. No provisions were made for mixed courts, but a later insertion into the agreements provided for the trial of indictable crimes with the aid of native assessors.[2]

In Egbaland and Yorubaland, the jurisdiction granted to Britain by the Judicial Agreements was exercised by the colony's Supreme Court under the provisions of the Supreme Court Ordinance and the Criminal Procedure Ordinance of 1876. The laws of the colony relating to indictable crimes were in force within the court's jurisdiction, and those relating to civil matters pertained only so far as local circumstances permitted. As for African customary law, it could be observed by the court where natives of Egbaland or Yorubaland were involved, when application of the colony's law would appear to the

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1- Minute by Ezechiel, 16 Jan. 1904, on Macgregor to Lyttleton, 15 Dec. 1904, CO 147/167; CO to the Officer Administrating the Government, 17 Mar. 1904, CO 147/169.
2- Moseley to Lyttleton, 10 Aug. 1904, CO 147/171.

court unjust in the circumstances.[1] By the end of 1904, therefore, de jure recognition of Britain's jurisdiction over non-natives in the Lagos hinterland had been accomplished. Britain's primary interests in Yorubaland had been secured; and there was, therefore, no necessity at the time to wring further concessions from African states and bring all functions of government within her jurisdiction.

1- Ordinance 14 of 16 May 1904, Ordinance 17 of 17 Sept. 1904, Ordinance 20 of 25 Nov. 1904. CO 148/3.

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